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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 837

UNITED STATES EX. REL. LORING J. WHITESIDE,
Petitioner,

vs.

J. EDWARD SLAVIN AND GEORGE R. TIERNAN,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Pro se.

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Whenever italicized words or portions of quotations appear, the emphasis is added by petitioner.

PETITIONER'S EXHIBITS

A — Brief of defendant with Appendix in *State of Connecticut* v. *Loring J. Whiteside*, Case # 4952 Supreme Court of Errors of the State of Connecticut (148 Conn. 208) Known as the *libel* case.

B — Brief of plaintiff with Appendix in same case

C — Reply Brief of defendant in same case

D — Record on Appeal in same case

E — Petition for Writ of Certiorari filed in Supreme Court of the United States in July 1961, Case No. 212. With Appendix.

F — Plaintiff's Brief in Support of Motion for Correction of Record, Case #4769, Supreme Court of Errors of the State of Connecticut, *Loring J. Whiteside* v. *State of Connecticut*. (148 Conn. 77) Known as the *contempt* case.

G — Record on Appeal in contempt case

H — Brief of plaintiff in error in contempt case.

I — Appendix to Brief of Plaintiff in contempt case.

J — Reply Brief of Plaintiff in Error in contempt case

K — Certified copies of State's Exhibits A-1 through A-23 in *State of Connecticut* v. *Loring J. Whiteside*, Court of Common Pleas, New Haven County, Connecticut.

NOTE AS TO REFERENCES

Because of the numerous references in the petition to Exhibits D, E, and K above, 9 copies of each will be provided for the use of the Court and likewise 9 copies of petitioner's brief and appendix before the Court of Appeals and 9 copies of his petition for rehearing, dated Nov. 6, 1962 are likewise being provided for the Court.

As indicated on page 98 of the Record on Appeal in this case Judge Anderson let it be noted for the record that the first 5 exhibits above listed are accepted by stipulation as correct copies of what they purport to be.

Exhibit K is the complete file of 23 newspapers published by the petitioner upon which the 23 counts of criminal libel were based. They were made a part of the finding in the case on appeal by the trial Judge, and hence are an integral part of the record. (Ex. D, p. 91, last par.)

In the

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No.

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vs.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner, Loring J. Whiteside, respectfully prays that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the Second Circuit entered on October 24, 1962 which affirmed the denial of an application for a writ of habeas corpus by the District Court for the District of Connecticut, because of failure to exhaust state remedies.

OPINIONS BELOW

The opinion of the court below in this case is reported in 309 F. 2d 322 and is set forth in the Appendix to

this Petition (p. A1). The ruling of Judge Anderson in the United States District Court will be found on Page A-3 of the appendix.

JURISDICTION

The judgment of the court below was entered on October 24, 1962. A timely petition for rehearing was filed in that court on November 7, 1962 and was denied by it on November 21, 1962. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254 (c) and Rule 22 (3) of this Court.

QUESTIONS PRESENTED

Two federal constitutional questions have been raised by the petitioner either one of which, he claims, is sufficient to justify the issuance of the writ. The *first* is the denial by the trial court of his motion for a bill of particulars, which deprived him of his rights under the 6th Amendment to the Constitution of the United States. The *second* is the prejudice exhibited against him by all 5 of the Justices in the Supreme Court of Errors of Connecticut, which thereby deprived him of due process under the 14th Amendment to the Constitution of the United States.

Three questions are presented for answer by this Court:

1. Did the manner in which the first constitutional ground was presented to the State Appellate Court, *prior to its decision*, justify the conclusion of the federal courts below that it had not been given an opportunity to decide the bill of particulars question?

2. Did the manner in which the *second* constitutional ground was presented to the State Appellate Court, *subsequent to its decision*, justify the conclusion of the federal courts below, that the State Court had not been given an opportunity to decide the prejudice question?

3. Do circumstances of such peculiar urgency exist in this case as to require prompt federal intervention and to call for a relaxation of the exhaustive requirement?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

AMENDMENT VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, *and to be informed of the nature and cause of the accusation;* *****

AMENDMENT XIV.

*** No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

28 U.S.C. Sec. 2254

An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State Court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process *or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.*

An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State, to raise by any available procedure, the question presented.

STATEMENT OF THE CASE

On October 27, 1958 petitioner was arrested and charged with 36 counts of criminal libel in City Court of New Haven, 12 counts were abandoned and Judge Harold E. Donegan found him guilty on 24 counts, no jury trials being permitted in that court. On appeal it became a jury trial de novo in Common Pleas Court, in which the prosecutor himself threw out one of Judge Donegan's guilty counts, and prosecuted on only 23 counts. After a 6 week trial and deliberation of nearly 14 hours, the jury on March 24, 1959 exonerated the petitioner as to 19 counts and found him guilty on 4 counts. These 4 counts were appealed to the State Supreme Court of Errors which affirmed the conviction (148 Conn. 208) on April 4, 1961. The Supreme Court of the United States denied certiorari on October 9, 1961, and the following day a petition for a writ of habeas corpus was filed in the Federal District Court: Judge Anderson on March 31, 1962 denied the writ for failure to exhaust state remedies, and on appeal to the United States Court of Appeals, 2nd Circuit, his denial was affirmed for the same reason on October 24, 1962. A timely motion for rehearing was denied on November 21, 1962.

The alleged libels had been published in the Grapevine Press, which had been founded and first issued on March 5, 1958 as the outgrowth of a plea for help received in November 1955 by petitioner from an Italian-American mason by trade, Angelo Chiaramonte, who had been swindled out of two houses, in one of which he had lived with his family; by two prominent lawyers in New Haven, one of whom was prosecutor in City Court and the other a younger man who aspired to become, and now is, a state senator. The help he wanted was assembling the facts of the swindle for presentation to the Grievance Committee, because by that time he had spent all his money trying to get redress at law, only to find himself double-crossed and gypped again. The facts were so damaging and pinned so many felonies on these two prominent lawyers that the Grievance Committee, although they set two

dates for a hearing, cancelled both of them and never notified any of the 3 attorneys involved of any hearing or even of any complaint having been filed against them. In an effort to provide some justification for their inaction, the attorney for the Grievance Committee even made an attempt to solicit a payment of money from Angelo in the apparent hope of reporting it as a bribe to discredit him, but was unsuccessful.

Different aspects of this story pinning corruption and incompetency upon the Grievance Committee and Joseph Morse its attorney, were published in 5 different issues of the Grapevine described in the information as Counts 9 and 17, which are GUILTY counts, and as Counts 1, 8 & 19, which are NOT GUILTY counts, but it is significant that although this story might well be regarded as the worst libel of any in all of the publications and the greatest reflection upon the integrity of the Chief Justice and his administration of justice in the state, it was completely omitted as a named libel either of the Grievance Committee or of attorney Joseph Morse in all 5 of the counts where it appeared. This fact is readily ascertainable from the Record of the case, because the trial judge specifically stated in his findings on page 91 of the printed Record (Exhibit D) that all 23 of the newspapers named in the information and presented as exhibits A-1 to A-23 at the trial are made a part of his finding, but need not be printed. To make them readily available for the members of this Court, 9 plastic bound copies are being provided to the Clerk of this Court for that purpose, and are referred to in the Court below as EXHIBIT K. The 9 extra copies are interleaved with red imprinted index sheets for convenience of reference.

THE JURY VERDICT OF NOT GUILTY ON 19 COUNTS ANNIHILATED THE STATE'S CASE IN TOTO

This disappearance of the State's case was not readily apparent to an outsider until the publication in the Record of the findings of the trial judge, aided by the prosecutor, for the reason that there was nothing in any of the 23 counts (Ex. D, pp. 2-8) to identify even one of the

alleged libels. There was no statement of the libelous words, no facts from which they could be ascertained, and no reference to page or line where they could be found as required by Sec. 355 of the Connecticut Practice Book, despite 3 efforts made by the publisher before trial to obtain a bill of particulars. But in the findings (Nos. 24, 28, 34 & 44 on pp. 23-28 Ex. D.) the trial judge identified 16 alleged libels in the 4 guilty counts, all but two of which are to be found anywhere from 4 to 10 times in the 19 not guilty counts. No outside testimony of any kind is needed to establish this fact. The record alone is sufficient. Because there are 123 pages of minature newspaper involved which include some 82,500 words, it takes a little concentrated effort to examine each of the newspapers in the record to ascertain the truth. This analysis was done for Judge Anderson on pages 6-12 of the petitioner's brief (Record on Appeal pp. 158-164) and will be found restated in the Appendix herewith, pp A-5 to A-18. References are given with page and line or paragraph where each alleged libel may be found in the not guilty counts together with a brief quotation from same. This proves by the Record alone what the jury thought about 14 of the 16 alleged libels in the 4 guilty counts and demonstrates the empty victory represented by the verdict of guilty on the 4 counts. It now remains to be seen what the State did to overcome this serious handicap they faced on the publisher's appeal of the 4 counts.

WHAT THE STATE DID IN THE FOUR GUILTY COUNT FINDINGS

The trial prosecutor and judge seemed to concentrate their efforts at first within the 4 guilty count findings =7, 9, 12 & 17. No. 12 is the only one of the four entirely free from tampering. No. 9 is padded with rubbish to such an extent that 90 out of 181 words in the main body of the finding are devoted to false or irrelevant matters; and in Count 17, 50 words out of 87 are given over to irrelevant matters, which makes it well over 50% junk.

GUILTY COUNT =17 (See Ex. K.)

In this count the two Aldermans, Kopkind and Pouzz-

ner are the only named libelees and 37 words are used to state what is supposed to be libelous as to them. Then 50 words are used to set forth what to all appearances might be libels of Charles Flynn, the Grievance Committee and Senator Marcus, but no one of these three were named as libelees in this count, so their presence violates Connecticut Practice Rule #400 limiting findings to relevant facts, and renders that finding over 57% deceitful.

GUILTY COUNT #9 (See Ex. K.)

The finding in this count starts off to create the false impression that everything related in the finding was published under the heading "Are all lawyers crooked?", whereas that heading applies to less than half of the first page and there are 7 other headings scattered throughout the other 5½ pages. Not only is this a calculated deception as to the contents of the whole newspaper, but it is also a deception as to the first paragraph of the paper, which is devoted to lauding honest lawyers and specifically refers to the honest lawyer who represented Charles Pierce of Orange. The first 5 words in the paper "Not by a long shot" answer the question contained in the heading and render it innocuous, but it suited the purpose of the trial prosecutor and judge better to present a twisted falsehood rather than a fair and honest statement.

A third falsification follows immediately when they substitute *Charles Flynn*, a lawyer and named libelee in that count, for *Charles Pierce*, who was neither a lawyer nor a named libelee. This was clearly a misrepresentation and a fraud on the court as to the contents of that first paragraph in the newspaper.

Their next misfeasance in Count 9 was the inclusion of what appeared to be 4 libelees none of whom are named in that count or in any of the 23 counts as libelees. The four are (1) Grievance Committee abdication (2) Joseph Morse, its investigator, playing ball with the underworld (3) Lip's Restaurant operating the largest baseball pool in the city (4) Weinstein, owner of Lip's. All four were irrelevant and immaterial and violated Practice Rule

#400 referred to above. There is little doubt that the illegal inclusion of the Grievance Committee in the findings of both Counts 9 & 17, was for the purpose of making sure that Chief Justice Baldwin as administrative director of the judicial department of the State (Statute 51-2) and that the other 4 Justices, who as previous Superior Court judges, had the duty, county by county throughout the State of appointing the Grievance Committees (Statutes 51-90, 166 & 167), would be made cognizant of the grave reflection upon his administrative ability and even his integrity, should he fail to take action upon publication of such explosive material. They knew he would look first at the guilty count findings and that if any thing could arouse his prejudice against the publisher, it would be this Grievance Committee debacle, which the trial prosecutor knew he did not dare enter among the named libelees because of the ease of proof fortified by certain documentary evidence described in the publications. (Ex. K., Count 1, Page 3, first Par.)

The 8th transgression of the trial prosecutor and judge in the finding of this one Count #9 is in some respects the worst of all. They state in the finding that the publisher wrote that Lip's Restaurant enjoyed "police immunity due to the fact that the owner Weinstein has a Catholic Priest for a partner." Only diabolical depravity could invent such a falsehood, when the record shows clearly the publisher had reported this as a story circulating in State Street taverns, as also was another story involving a doctor; and then concluded:

> "My impression is that both stories are deliberately falsified inventions calculated to conceal the real owners, or higher ups, and fed into circulation regardless of the slander involved to two of our noblest professions." (Last sentence, page 3, Count 9)

GUILTY COUNT #7

Four allegedly libelous statements are set forth in this finding, the first 3 of which are presented as if they emanated from the publisher himself, when actuaally, as the context shows, the first two were made by a prostitute

madam about Chief of Police Monahan, who was then defended by the publisher, so that actually no libel ever existed so far as Monahan was concerned. The third statement, by reference to Count 7, page 3, Par. 2, clearly shows it came from some third person to Barbara Chairamonte at a time when neither she nor the publisher had any idea as to what Aldermans were meant. Count 17, page 3, last Par. discloses it actually was uttered by a person very close to the Aldermans as a warning of the fate awaiting Barbara if she did not cease feeding the publisher facts pertaining to how she and her husband were swindled out of two houses. The action of the jury in declaring Counts 1, 3 & 15 not guilty, in all 3 of which is found discussions of the Aldermans' reputation for ordering death when needed for purposes of discipline in the underworld which they control, is ample evidence of the jury's conclusion on this point.

19 MORE FALSIFICATIONS & 10 MORE IRRELEVANCIES

The next area invaded by the trial prosecutor and judge was that of the 19 NOT GUILTY Counts which were not at issue upon the appeal and should have had no place in the findings whatsoever, because the publisher had already been discharged on all of them. The trial prosecutor, however, trotted out every one of the 19, labored to produce what amounted to a fairly decent bill of particulars for each one, and followed these 19 counter-findings up with another set of 19 findings, one for each count, stating that every statement he had selected for mention was *false and malicious*, the jury verdict notwithstanding. By this means the 19 not guilty counts looked just as guilty as the 4 guilty ones, and this mammoth hoax was printed in the record as serious findings of a six weeks trial in which the publisher had supplied 100% of all evidence presented to establish the truth or falsity of his published statements, and the prosecutor had not put on the witness stand even one person, alleged libelee or otherwise, to counteract the flood of truth testimony presented to the jury.

At least ten more irrelevancies were added in five of

these not guilty counts as follows: COUNT 4 — *Peggy Buckholtz* defrauding her father. COUNT 13 — *Peggy Buckholtz* and her illegitimate child, *Alec Botte* fathered it, *Postal Inspector* claiming immoral and obscene material in Grapevine. COUNT 16 — *Arthur T. Barbieri*, a racketeer. COUNT 19 — *Pouzzner & Hadden*, one of the rottenest firms that ever graced the New Haven bar, *Bill Hadden*, former attorney general of State, a member of that firm. *Murphy* murdered his aunt in Shelton. COUNT 20 — *Longbotham*, a swindler, *Kopkind*, a swindler. Not one of these ten named transgressors is listed as a libelee in the numbered count shown above, which discloses a continuing wholesale disregard of Connecticut Practice Rules, and the padding of counts with a lot of useless and irrelevant material.

It is worthwhile noting at this point that if there was any truth at all in these findings on the 19 not guilty counts, trial prosecutor Tiernan owed a duty to the State and to the public to institute a cross appeal on everyone of them under the authority of Connecticut Statute 54-96. He was derelict in his duty to let anyone guilty of such false accusations escape on so many counts. This dereliction in itself brands Tiernan for what he is.

These 19 falsifications of the not guilty counts are listed in the State Record (Exhibit D) on pages 21 to 31 as Numbers 13, 15, 17, 19, 21, 23, 27, 31, 33, 37, 39, 41, 43, 47, 49, 51, 53, 55 & 57. Everyone of them is a fake and a gross contempt of any self respecting court. The most liberal interpretation of Connecticut's very liberal rule as to findings, affords no justification from any standpoint on any grounds for any one of them.

OTHER FALSEHOODS FABRICATED FOR THE RECORD BY THE TRIAL PROSECUTOR

An assortment of some 47 errors, most of which are falsehoods was set forth in assignment of error #8 on page 94 of Ex. D. Aside from those already mentioned, this list furnishes one which is outstanding as an example of the superb art displayed by the trial judge and prose-

cutor working together in composing sweeping statements of untruth. Finding =11 on pages 19-20 of the record (Ex. D) assumes to summarize the contents of all 23 counts. It asserts the publication of offensive, indecent, scurrilous and abusive matter about *every one* of the 16 prominent men who are named by the state as alleged libelees, whereas the record clearly shows that every word published about 10 of them in all 23 counts was pronounced nonlibelous by jury. As to them this finding is a falsification of no mean dimensions.

But finding =11 is also actually a falsehood with respect to the remaining 6 alleged libelees who are those named in the 4 guilty counts, and this is fully substantiated in the record as follows:*

1. **KOPKIND**, found by jury in 15 **NOT GUILTY** counts (1, 2, 3, 4, 5, 6, 8, 11, 14, 15, 16, 18, 19, 22, 23) as being properly chargeable with perjury, blackmail, intimidation, betraying a client, as being king-pin and organizer of the vice underworld in and around New Haven, including all forms of gambling, prostitution and narcotics & being the city's most astute liar, crook and gangster for 29 years.

2. **SYDNEY ALDERMAN**
3. **RALPH ALDERMAN** } found by the jury in 7 **NOT GUILTY** counts (1, 3, 5, 8, 15, 16, 22) as being properly chargeable with being the hidden millionaire clients of Kopkind since 1929, with being the vice-lords of New Haven's underworld, with fronts as attorneys, tailors and business men, and with reputations of being able to extinguish rebellious souls.

4. **CHARLES FLYNN** found by jury in 7 **NOT GUILTY** counts (1, 2, 4, 5, 10, 13, 14) to be properly chargeable with perjury because of falsehood in open court, protecting fraudulent clients with fabricated alibis; forming with Kopkind a firm of gang-

* Verification of all these statements may readily be obtained by an examination of the references to and excerpts from the 19 not guilty counts to be found on pages A-5 — A-18 in the appendix to this petition.

ster attorneys who tell judges what to do, and are mighty lords of hidden activities; a participant in Kopkind's illegal fees; neither Kopkind or Flynn ever make restitution to their victims, but will pay up to $100,000 as hush money.

5. DANIEL POUZZNER in NOT GUILTY counts 14 and 15 is declared to have gotten his proportionate share of Kopkind's criminal loot from 1929 to 1953; was disbarred for 2 years, reinstated after one year; the Pouzzner firm betrayed and deceived a client, colluded with Marcus to play the client for a sucker; and that Pouzzner is the really black sheep of his firm, but could not be blacker than Kopkind, his gangster law partner from 1929 to 1953.

6. JOHN MONAHAN is clearly shown by the record (Ex. K Count 7, p. 2, Par. 2 and Ex D p 23, Par. 2) as being defended by the publisher against two statements made by a prostitution madam, instead of the publisher pronouncing as his own the charges of Madam X. So no libel is involved.

Two more falsehoods in the findings should suffice to establish the pattern followed by the State to achieve victory for a lost cause.

The trial judge at the instance of the prosecutor in Finding #36 on page 26 of Exhibit D states that the defendant wrote "*that a suit for libel against the defendant would be useless.*" By referring to the 3rd paragraph on page 3 of the newspaper covered by Count 13 (Ex. K), we find the heading of that paragraph is "SUIT AGAINST ME FOR LIBEL WOULD BE USELESS", immediately followed by the words "So said Charlie Flynn in that famous hour and 25 minute telephone conversation reported on June 11th as being held on June 9th. Said I did not have anything in my name." The rest of the paragraph was devoted by the publisher to naming two Savings & Loan Associations in New Haven where he had a few thousand dollars on deposit in his name, and other property which any so called libelee could latch on to if he were so inclined. Thus the trial

judge reported as his finding exactly the opposite of what the publisher had said. He put in the publisher's mouth what Charlie Flynn had said. Which would justify one count of perjury against the judge with the simplest of documentary evidence available in the record itself to prove it.

Nowhere does it appear more clear how the trial prosecutor and judge worked together in an effort to pin on the publisher reckless disregard of the truth of which he is innocent and they are guilty, than their Finding #90 on page 34 of Ex. D. This finding reads: "*Most of the issues of the Grapevine Press show a reckless disregard for the truth.*" The jury found 19 of them true which would be 83% out of a total of 23, and when the other 4 are scrutinized with some care, as is done in the Appendix herewith on pages A-5 to A-18, it is clear that the jury let it be known by their verdict on the 19 not guilty counts that they had exonerated the publisher on every statement he had made which could possibly be considered libelous in the other 4 counts because they contained only repetitions in new settings of statements presented in the 19 not guilty counts. It does not take much figuring to see how the trial prosecutor and judge, by breaking all known practice rules and the 9th commandment against bearing false witness, have disgraced both themselves and the State in a series of falsifications with respect to these same 23 issues, far in excess of 100%.

LIBEL TRIAL NOTORIOUS FOR LACK OF STATE WITNESSES OR EVIDENCE

No feature of the entire 6 week trial was more marked than the total absence of state witnesses, even of the alleged libelees themselves. No effort was made by the State to disprove by its own witnesses any statement made by the publisher in any of the 23 newspapers covered by the 23 counts nor any of the truth testimony presented week after week by the publisher. This is set forth in finding No. 6 at the top of page 15 in Exhibit D where it is stated that after the State introduced into evidence the 4 newspapers found guilty of libel, the State rested

its case and even though the publisher proved that everything stated therein about the 6 named libelees was made on privileged occasions, —

> "*the State did not offer one witness or one iota of evidence to prove* that the statements made by the defendant in said State's Exhibit A7 * A9 * A12 * and * A17 were false or made maliciously."

Ralph and Sydney Alderman were the only two of the 6 alleged libelees named in the 4 guilty counts to give any testimony at the trial. They were called as witnesses by the publisher and were cross examined by the State. Their testimony is summarized in the brief and appendix of the State (Exhibit B, appendix p. 20) and in the publisher's brief and appendix, p. 3-4 (Exhibit A) How much value and credence was given to this testimony by the jury is best ascertained by reading pages 3 to 7 in the newspaper listed in Count 22, which the jury pronounced not guilty of any libel. The pages listed contain sort of a brief summary of most of the facts reported in all of the other counts about the two Aldermans and Kopkind, and afford a quick way of getting in small compass what is reported at greater length in other issues.

Probably the best evidence of the amazement caused at the trial because of the State's failure to introduce any witnesses or evidence is the jury's action reported on pages 71 and 72 of Exhibit D, where beginning with finding #260, the jury asked "Does not the State have the responsibility of placing witnesses on the stand to prove the innocence of the alleged persons against the libeled charges?"

One of the most anomalous features of the presentation of evidence at the trial was the reading by the State of every word in all 23 newspapers covered by the 23 counts. Nothing better could have been presented to convince the jury of the truth contained in every issue, because most of the statements were accompanied by documents or correlated incidents to give the flavor of truth and details of the battle for righteousness. Nothing in all of the

issues could support the falsified findings. Conscientious jurors could do nothing else but find the publisher not guilty on every one of his statements. The State's only evidence — the 23 newspapers — went a long ways towards convincing the jurors that a royal battle for righteousness was in progress before their very eyes and that God Himself was lending a hand to assure the outcome.

When the trial judge states in the record (Ex. D, bottom of p. 18) that the State offered evidence to prove what is contained in the 91 findings to follow, he simply added one more falsehood to the record. Even conceding that the trial prosecutor and judge may have disbelieved the flood of truth testimony presented by the publisher on all 23 counts, they and the five Supreme Court Justices must know that "a failure to believe the only testimony as to a fact, will not justify an opposite finding." See Maltbie — Appellate Procedure-2nd Ed. 1957,191 (Sec. 155) and cases therein cited.

SIX EVIDENCES OF PREJUDICE CONTAINED IN THE LIBEL DECISION

Evidence of Prejudice No. 1

RECEPTION ACCORDED THE RECORD ON APPEAL TO STATE SUPREME COURT

The findings met an instant approval in the high state court and a genuine wholesale welcome was extended in the following quotation from Justice Mellitz's opinion beginning at the bottom of page A5 in Exhibit E:

> "The defendant's objection to the inclusion of certain paragraphs in the finding involves a misconception of the nature of the finding in a jury trial. It is merely a narrative of the facts claimed to have been proved by each side, made for the purpose of fairly presenting any claimed errors in the charge or rulings of the court. **** The finding here furnished a fair and adequate basis for testing the errors in law claimed to have been made by the court, and no corrections are warranted."

This sounded the keynote for the rest of the written opinion. They acquiesced in and placed their stamp of approval on a series of findings on all 23 counts which were 100% faked and complied in form only with Sec. 400 of the Practice Book as to findings. It is true great freedom in claiming proof is permitted in findings in Connecticut, but that freedom does not extend to flooding a record with completely false findings when no witnesses were presented at all by the state to establish anything stated in the findings and the evidence in the 23 newspapers proved to be exactly the opposite of what the state set forth in the findings, and it presented no witnesses to counteract the great mass of evidence presented by the publisher, which occupied some 1200 pages. Findings in Connecticut cannot be based upon disbelief of the only testimony as to a fact. (See page 15 *supra*). Furthermore it is queer reasoning for any court to assert that falsified findings and fake findings can furnish "a fair and adequate basis for testing errors" or doing any other useful service in a court of justice. Correction or eradication of falsifications in the record with adequate punishment of the offenders is the only reception fit for such felonious behavior.

Evidence of Prejudice No. 2

CAN THE SAME STATEMENT ABOUT THE SAME PERSON BE NON LIBELOUS THIS WEEK & LIBELOUS NEXT WEEK?

The Connecticut State Supreme Court of Errors says "yes" in the 2nd paragraph on page A5 of Exhibit E. where Count 12 is under discussion and the principal statement in question is "*Kopkind committed perjury, blackmail and intimidation.*" Two or three witnesses testified at the trial to Kopkind's commission of all three felonies, and some of their testimony in abbreviated form is reproduced in the appendix of the publisher's brief to the State Supreme Court on pages 6 and 9, (Ex.A) and documentary proof of the perjury was presented at the trial, with not a scrap of evidence of any kind presented by the State to offset or dispute it. In at least 11 places

in 8 different newspapers covered by 8 not guilty counts one or more of these three crimes was attributed to Kopkind (See Appendix *infra* p. A-14 No. 12) and in every one of them the jury pronounced the publisher NOT GUILTY of any libel. The publisher's attorney insisted that the conviction on count 12 which included the same statement quoted above should be set aside for the reason it had been declared non libelous in at least 8 other newspapers, and could not be libelous and non-libelous at the same time. The State Supreme Court held that each count charged a separate and distinct offense and was complete in itself, and declined to disturb the verdict on Count 12. If the statement were a libel and untrue, the court's reasoning would apply and every time it was repeated would constitute a new crime. But once a statement is declared non-libelous by a competent jury, it may be repeated a thousand times with impunity.

Evidence of Prejudice No. 3

FAILURE OF DEFENDANT TO QUESTION SUFFICIENCY OF THE EVIDENCE

This was the ground assigned by the State Supreme Court for refusing to disturb the verdict on Count 12 above. (Ex. E, p. A5, l.28-29). This is a descent into grim humor when there was a total absence of evidence to be questioned except for the testimony of the publisher's own unchallenged witnesses as to the acts of Kopkind and the circumstances under which he had committed all 3 crimes. But the humor quickly fades away and a question of veracity arises when it is considered that defendant

(a) Urged that the guilty verdict be set aside as to all 4 counts - 7, 9, 12 & 17, as being *contrary to the evidence* and to the law. (Ex. D, p. 9, bottom): This motion was denied by Judge Wall on March 28, 1959.

(b) Set up this denial as error =2 on his appeal (Ex. D, p. 93)

(c) Stated in the conclusion on page 33 of his Brief (Ex. A) that neither the law *nor the evidence*

support the verdict of guilty on counts 7, 9, 12 & 17.

The question may well be asked was it through ignorance, mistake, or premeditation that Justice Mellitz stated in his opinion that the defendant had "not questioned the sufficiency of the evidence to warrant a conviction on count 12?"

Evidence of Prejudice No. 4

DEFENDANT'S DELIBERATE REPETITION OF THE STATEMENTS IN VARIOUS ISSUES

Justice Mellitz (Ex. E, p. A4, l.25-27) says in his opinion that

> "Evidence of malice could be found also in the defendant's deliberate repetition of the statements in the various issues of his publication."

He could not say that, if he was paying any attention to the *jury* verdict on the 19 not guilty counts. Time and again they gave the lie to that remark by Justice Mellitz. There were 12 not guilty counts chalked up against Kopkind where he was named as an alleged libelee - 1, 2, 3, 4, 5, 6, 8, 11, 14, 15, 18 & 22 - and three more where he was not named - 16, 19 & 23. The only way Justice Mellitz could find any comfort in saying such a thing would be to close his eyes to what the jury did, and feast his eyes on the falsified findings in all 23 counts so bountifully supplied by the trial prosecutor and judge. Kopkind's law partner in two firms, Charles Flynn, also had the distinction of being a named alleged libelee in 6 not guilty counts-- 1, 2, 4, 5, 10 & 14 and unnamed in =13. The fact that 10 of the 16 alleged libelees were named in 2 or more counts in the not guilty list, completely demolishes repetition as a legitimate source of malice for Justice Mellitz. It stands to reason that when a publication sets out to tell a story of corruption in the legal profession involving so many in the vice underworld employ and traces the leadership back for some 45 years the leaders will have to be mentioned in numerous chapters and this trial covered 23 chapters, published at the rate of one a week. The repeti-

tion of the leading names is inevitable and no more an indication of malice than smoking a pipe.

Evidence of Prejudice No. 5

CAN STATEMENTS DECLARED NON LIBELOUS BY A JURY BE CALLED DEFAMATORY?

Defamatory signifies "unjustified injury to another's reputation", "a slander" or "a libel". The word itself denotes a wrong towards another, and cannot be justified or tolerated in respectable society. Naturally the State in a prosecution for criminal libel charges that all of the libels are defamatory material. But when a jury listens to several weeks of trial testimony and declares no libel existed in 19 counts in which were contained all of the possibly libelous statements in 4 other counts which they designated as guilty, all of the so-called libelous material ceases to be either libelous or defamatory, and any honorable attorney or judge well knows that fact. Therefore no unbiased judge will ever refer to any statement once cleared by a jury of being libelous, *as defamatory matter*, or as being *scurrilous*, *abusive* or even *offensive*. Yet Justice Mellitz for himself and the four other Justices in the State Supreme Court comes right out in his opinion and states: (Ex. E, p. A4, l.20)

> "The publications clearly disclosed such scurrilous, abusive and offensive matter that a jury plainly would be justified in concluding that the publications were made from improper and unjustifiable motives, in the absence of evidence of their truth or other evidence of good faith."

He had the jury verdict before him. He knew they had already found every possible libel in all 23 counts was *not* a libel. But he disregarded their verdict and leaned on the falsehoods substituted by the trial prosecutor and judge in the findings of the 19 not guilty counts as a basis upon which to stand in making the observations in the above quotation. Throughout his opinion Judge Mellitz closes his eyes to the jury verdict and repeatedly refers to the publisher's statements as "*defamatory mat-*

ter," twice on page A2, twice on page A3, twice on page A5 and the above quotation from page A4. He overrides the jury verdict in both thought, word and deed. He imputes to the jury what he would like them to feel justified in concluding, which they have already told him they do not conclude. This leaves Judge Mellitz and his fellow Justices out on a limb, which in the next section we hope to point out they have cut off with such subtle skill that few honest men can perceive it until it is pointed out.

Evidence of Prejudice No. 6

FABRICATION OF THE MOST GIGANTIC FALSEHOOD IN THE ENTIRE PROSECUTION

The buzz saw of prejudice, deep seated, dictated by a desire for self preservation as well as solicitude for many prominent lawyers and judges whose reputations are at stake, began to turn faster and faster until it had cut down not only the defamatory limb to which they all were clinging, but also the whole trunk of the tree of the trial itself. In full reliance upon the falsified findings in the 19 not guilty counts and the fundamentally false findings in the 4 guilty counts Judge Mellitz by inference alone simply assumed the complete absence of evidence of truth or other evidence of good faith in the entire trial. A fundamentally honest legal mind will not perceive this radical disposition of the 6 week trial and its vast production of truth and good faith testimony believed by the jury, because it is buried in what may be called a *proviso clause* at the end of the quotation given on the preceding page as follows:

> "in the absence of evidence of their truth or other evidence of good faith."

By stopping and closely observing the next sentence we can see that Justice Mellitz meant this proviso clause to be a declaration of fact and he treats it as such in the next sentence which reads as follows:

> "Evidence of malice could be found *also* in the defendant's deliberate repetition of the statements in the various issues of his publication."

Thus Justice Mellitz and his four associate Justices descended to the level of the trial judge and prosecutor and manufactured the most gigantic falsehood in the entire case and laid themselves open to a charge of using a high court decision as a vehicle for perjury in violation of their oath as lawyers upon admission to the Connecticut Bar, set forth in Statute 1-25 as follows:

> "You solemnly swear that you will do no falsehood, nor consent to any to be done in court, and if you know of any to be done you will give information thereof to the judges, or one of them, that it may be reformed;"

The penalty for perjury as stated in Statute 53-143 is up to 5 years imprisonment. And there is little doubt that all five of the Justices are guilty of the crime of Conspiracy as defined in Statute 54-197, penalty for which is not more than $5,000 or imprisonment for not more than 15 years or both. This is a heavy penalty for the high court of any state to face. The 5 Justices must have been faced with staggering repercussions if they failed to sustain the 4 count conviction of the publisher.

EVIDENCES OF PREJUDICE DISCLOSED BY THE CONTEMPT DECISION

The decision in this case, *Whiteside* vs *Connecticut*, is reported in 148 Conn. 77. It will also be found on pages A48 to A53 of Ex. E.

Among the exhibits accepted by Judge Anderson at the hearing before him on October 23, 1961 are the following pertaining to this contempt case:

Exhibit F	Plaintiff's Brief in Support of Motion for Correction of Record
Exhibit G	Record on Appeal to Supreme Court of Errors
Exhibit H	Brief of Plaintiff in Error
Exhibit I	Appendix to Brief of Plaintiff
Exhibit J	Reply Brief of Plaintiff

This contempt case arose during the first trial of the

libel case before Judge Donegan in City Court where no jury trials were permitted. On the 3rd day of the trial before court opened or was scheduled to open, the publisher filed a demurrer and a motion for Judge Donegan to disqualify himself. After court opened Judge Donegan stated: (Ex. G, p. 11-12)

> "But I will not, Mr. Whiteside, again permit contemptuous pleadings to be filed. I am not going to hold you in contempt, sir, but the manner in which you filed this pleading, and the language contained therein in the opinion of the Court is contemptuous."

Seven hours later, at the close of the trial he made three statements: (Ex. G, p. 12, lines 11, 14 & 18)

1. "I find Mr. Whiteside guilty of contempt by the pleading that he filed as of this morning.
2. "I can't conceive of your being a graduate of a law school and filing and being as contemptuous as you were this morning in filing Issue No. 37 of the Grapevine Press, and for that I fine you $100.00".
3. "I think you were most contemptuous in your pleading here this morning."

Eleven days later when the publisher presented his appeal papers on the contempt fine to Judge Donegan for his approval (Ex. I, p. 5, l. 4) the latter crossed out the words "apparently changed his mind" and added a new ground for the contempt "together with the argument on the motion in court." (Ex. I, p. 5, l.9) which he said (l.7) appeared in the annexed transcript, which was distinctly false for it did not so appear. Then Judge Donegan committed two felonies:

a. He falsely altered the official record of the proceedings by adding the words "at this time" after the word "contempt" and before the word "sir" (Ex. G, p. 12, line 2; also (Ex. I, p. 6, line 12), in violation of Statute 53-1, calling for up to 10 years in state prison.
b. He then certified the false alteration in violation

> of Statute 52-165, calling for up to 5 years in state prison.

and on top of that he laid himself wide open to still a third charge of a major contempt under Statute 51-33 and by authority of the case of *Goodhart* vs. *State*, 84 Conn. 60 (1911) where the court states at page 62:

> "To deceive the court by untruthful statements *** is unlawful and disorderly conduct, and a contempt in the face of the court."

The City Court Prosecutor knew the publisher had an unbeatable case on appeal and asked him if he would drop the appeal if the $100. was returned to him. Apparently Judge Donegan would not listen to any such arrangement and insisted upon the felonious course of conduct described above. Unfortunately Judge Donegan did not stop to think long enough to discover that his felonious interpolation of the words "at this time" would not fit in between what he said before and after them so as to make sense, and thus enabled his felony to be proved by internal evidence alone. (See Ex. F, p. 2-4).

RECEPTION ACCORDED CONTEMPT CASE BY THE 5 SUPREME COURT JUSTICES

1. They condoned the multiple falsifications inserted in the record by Judge Donegan and neither punished nor rebuked him, and thus trampled under foot the oath every attorney must take in the State of Connecticut, before being admitted to the bar, and winked at the law against perjury, against false alteration of court records, and against false certification, full evidence of which was placed right in their laps by Exhibits F, H, I & J.

2. They refused even to correct the record so as to eliminate the most glaring falsehood, by denying all of the publisher's efforts and motions for that purpose, herein listed below. See following references to Exhibit E:

> A43 for text of 1st *Motion* for Correction of Record, dated Aug. 30, 1960

Exhibit F contains written argument on this motion submitted on October 4, 1960, which was the date on which oral argument was presented to the 5 Justices in person.

A46 for text of *Motion to Reargue* above Motion, dated October 8, 1960

A47 for Addendum to written argument on 1st motion, dated October 5, 1960

A45 for text of *Motion in Trial Court* to Correct Record, dated Sept. 29, 1960

A24-25-26 for comment upon this situation as evidence of prejudice of all 5 Justices, in motion for relief made to State Supreme Court of Errors, dated May 23, 1961.

3. Then the 5 Supreme Court Justices turned right around and entered the falsehood arena on their own initiative and declared in their opinion, in the 8th line from the end, Exhibit E, page A53, that "*The accused took no proper steps to have the claimed erroneous addition deleted.*" This was the first falsehood to hit the publisher's eye in the opinion and it struck him an awful wollop to realize that there is any body of men in the entire state who would so openly and glaringly lie about so obvious a fact.

4. The five Justices then descended into about the lowest level of human conduct which marks a serious state of moral disintegration, when they stated in the last paragraph of their opinion, beginning at line 5:

> "The court was not only entitled, but it was its duty to correct the transcript incorporated in the bill of exceptions, in order to make the transcript conform to the fact."

Thus they attributed verity to falsity with full knowledge of its impossibility. This bestowal of a commendation upon a lower court judge for the commission of a legal and moral atrocity, transcends the lowest conception of human depravity.

5. By the artifice of concealment and suppression of a *controlling fact* in the record, the 5 Justices virtually

altered the record themselves so as to defeat the publisher's case. The *controlling fact* in the entire case was provided by Judge Donegan himself in his remarks at the time he imposed the $100. fine for contempt. He spoke of how contemptuous the publisher had been in filing Issue No. 37 of the Grapevine Press, then said "*and for that I fine you* $100.00" (See Exhibit G, page 12). This *controlling fact* is contained in quote No. 2, *supra*, on page 22. Quotes No. 1 & 3 also support this one controlling fact. This is nothing invented by the publisher as an ingenious claim, as Judge King seeks to impute in his last sentence on page A51 of Exhibit E. It is the positive assertion of Judge Donegan himself and in no way can it be over ridden by any sophistry. Judge King knows that, so he proceeds to conceal this controlling fact so that it never appears anywhere in his written opinion. Observe the fifth paragraph of his opinion at the bottom of page A51 in Exhibit E, where he purports to quote what Judge Donegan said. He lifts the word "*filing*" and "*the grapevine press*" from the No. 2 quotation, conceals the rest of No. 2, then jumps to No. 3 and quotes the phrase "*most contemptuous in (his) pleading here this morning.*" Even this concealment does not give him clear sailing to set up mere mention of the motion in court as a basis for the fine. Dishonest concealment of the truth was Justice King's only means of snatching away the publisher's right to a favorable decision. This he did with the approving concurrence of the other 4 Justices. As stated in the publisher's brief to Judge Anderson on page 19, this behaving of the State High Court resembles a highway robbery in broad daylight, and requires the highest known skill among educated men. (Record p. 171)

WHAT WAS DONE TO PRESS THE FIRST CONSTITUTIONAL QUESTION

I. DENIAL OF BILL OF PARTICULARS, IN VIOLATION OF RIGHTS UNDER THE 6th AMENDMENT.

This is the one and only federal question raised in either the trial or appellate court prior to the decision

Three times it was urged in the *trial* court - by motion for bill of particulars (Ex. E. p. A35) which was denied; by demurrer (Ex. E. p. A 36) which was overruled; and by refusal to plead to unknown charges (Ex. E. p. A37-40) which was ignored and defied by the trial judge who entered a plea of not guilty on his own initiative to all 23 counts in the information.

In the *appellate* court this objection was #I-(a) among the errors assigned, and declared the information defective because of the absence of any allegation of malice, *or facts* which were its equivalent. (Ex. D, p. 92). This may well be regarded as inadequate to raise the federal question, but when the publisher's attorney set forth in his brief (Ex. A, p. 11) that "the State in its information did not allege malice *nor did it allege facts* which were the equivalent of malice," Mr. Tiernan in his brief for the State clearly showed that he regarded this statement as raising the bill of particulars issue, and he forthwith proceeded in his brief (Ex. B, p. 8-9) to justify the absence of any facts or any bill of particulars. The state thus became the very first one specifically to raise the bill of particulars question by name in the appellate court, and Tiernan cited for his authority the very same case the trial judge had relied upon in denying the bill of particulars. (Ex. E, p. A41). This opened the way wide for the publisher's attorney in his reply brief (Ex. C, p. 6-12) to devote the better part of 6 pages to showing how the State had violated the publisher's constitutional rights to be informed of the nature of his offense. This was followed on January 5, 1961 by the oral argument, the major portion of which was devoted to this one federal question. (Ex. E, p. A34).

This one constitutional question became by far the major topic of both argument and discussion between the Supreme Court Justices and Damiani who represented the publisher. Justice Murphy inquired if a motion for a bill of particulars had been made, and when the answer was in the affirmative, he sent the clerk out for the certified file and examined that motion. Justice Mellitz inquired how one could know what the accused was charged

with specifically, since the State had failed to set forth the line and page in each newspaper, which the State claimed to be libelous. So favorable were the comments from the Justices as to the failure of the State to comply with Practice Book Sec. 355 requiring the specification of page and line for identification of each libel, Damiano was certain he had won the case on this one constitutional point alone, if on no other ground. On December 20, 1961 the publisher made a motion to Judge Anderson asking for the reopening of the habeas corpus hearing for the purpose, among other things, to present oral evidence that the constitutional point as to being deprived of a bill of particulars was actually presented to the Supreme Court of Errors on Appeal and was argued and discussed at length in the oral argument on January 5, 1961, but Judge Anderson denied the motion on December 21, 1961, and this denial was made one of the grounds for the publisher's appeal to the United States Court of Appeals for the Second Circuit. (Certified record on appeal p. 219).

When the State appellate court handed down an adverse opinion on all 4 counts on April 4, 1961 without a word as to what they had decided upon this thoroughly-thrashed out federal question, the publisher filed a *motion for reargument* under date of April 6, 1961 (Ex. E. p. A9), assigned this federal question as one of the grounds for the motion and pointed out the failure of the Court to consider it in its decision, which was denied without comment on April 11th.

In an effort to draw out the Appellate Court and learn why it had not acted on so important a constitutional question, the publisher filed a motion on May 31, 1961 for certification as to consideration and rejection of this federal question. (Ex. E. pp. A33-35). It will be noticed that this motion recited most of the facts heretofore stated, which were not denied by the Court, but the motion was denied on the grounds that "the Claims made in it were not included in the assignments of error as set forth on pages 92-98 of the appeal record Conn. Practice Book Sec. 409".

WHAT WAS DONE TO PRESS THE SECOND CONSTITUTIONAL QUESTION

II PREJUDICE OF STATE SUPREME COURT DENIES DUE PROCESS UNDER THE 14th AMENDMENT.

This constitutional question was not known to exist until after the publication on April 4, 1961 of the written opinion of the high state court. Hence there was no possible way of raising it at any time prior to April 4th. Some slight warning was given on January 31, 1961 when the State Supreme Court announced a decision in a writ of error contempt case involving the publisher which was adverse to him and appeared to indicate it was intentionally sacrificing *his* rights in order to protect a New Haven City Court judge from public disgrace for felonious alteration of the court record; but after the royal reception accorded attorney B. Fred Damiani at the oral argument of the libel case on January 5, 1961, he had no reason to suspect that decision was indicative of deep prejudice against the publisher himself. Even when he was slapped down by the April 4th decision, Damiani could not understand what had gone wrong. All he knew was that something had come up which made it impossible for the high court to award the decision to him and that he had incurred the displeasure of the court and could no longer represent the publisher either in the state or federal courts on this particular matter. After some effort to get another lawyer, the publisher soon realized that no other lawyer in the state could afford to carry this case any further and it fell to his lot to handle it himself. The general attitude seemed to be that since the state high court and its Chief Justice holds the hammer in the law administration of the entire state, it would be highly injurious to the practice and clients of any lawyer who undertook the further defence of the libel prosecution especially since it was quite generally known that the vice underworld of the state wanted an affirmation of the conviction on the 4 counts. Damiani had rendered such magnificent service on the case in the trial court, the publisher could offer no valid objection to his retirement at this stage under all of the circumstances.

The publisher had no knowledge of the record or briefs

or arguments presented in his libel case by his attorney and had only one copy of the record which on the night of April 13, 1961 he loaned to Chief Justice Baldwin at his request (Record on Appeal p. 103-104) when he called at the latter's residence to get his signature to a stay of execution, pending petition for certiorari, and the Chief Justice did not return the record, or a substitute, until May 5, 1961 after the publisher had been obliged to write two letters, April 20 and 29 (See p. 105-106, Record on Appeal) urgently requesting its return. This caused considerable delay to the publisher so that it was the middle of May before he had become sufficiently familiar with the situation to realize that the opinions rendered in both the libel and contempt cases when taken in conjunction with the records of both cases, disclosed rank lies and an amazing state of prejudice which clearly denied him due process of law which could and should be attacked immediately.

On May 23, 1961 the State Supreme Court granted in part one motion of the publisher for correction of the record and he had in course of preparation a supplementary motion of the same nature which he filed on May 24, and incorporated in it as a violation of due process under the 14th Amendment, a variety of instances in both the libel and the contempt cases indicating clearly the prejudice the 5 Justices entertained towards the publisher, (Ex. E. p. A19-A33) and asked for such other relief or action as the Court might deem proper. On June 7, 1961, two weeks after it was filed it was denied "by the Court, Baldwin, C.J." Full and complete and "timely" opportunity was thus afforded the high state court to pass upon this second federal question, and it was simply evaded.

REASONS FOR GRANTING THE WRIT

I.

THE FIRST CONSTITUTIONAL QUESTION INVOLVING THE DENIAL OF A BILL OF PARTICULARS IN VIOLATION OF THE 6th AMENDMENT WAS ACTUALLY PRESENTED TO THE HIGH STATE COURT FOR DECISION EVEN THOUGH BY A FORTUITOUS ROUTE, AND EVADED BY IT.

This fortuitous route is traced in some detail on pages

26 & 27, *supra*. The State disclosed in its information no facts of any kind to identify what it considered libelous. The newspapers themselves were not included in the information, nor any quotation therefrom which was regarded as libelous; nor any facts from which they could be deduced, nor any references to page and line where they could be ascertained as required by Par. 345 & 353 of the Connecticut Practice Book, any one of which could have supplied the implied malice, lack of which the publisher's attorney sought to emphasize. The Court in its opinion (Ex. E, p. A1, l.14) evades completely the *lack of facts* assigned as an error and addresses its attention solely to the lack of an allegation of malice.

However the State in its brief (Ex. B, p. 8-9) showed that it regarded this *lack of facts* to mean the lack of a bill of particulars which it sought to justify, and in turn the reply brief urged at considerable length the failure of the State to inform the accused as to the nature of the crime he was accused of (Ex. C, p. 6-12), and then this constitutional point occupied much more time in the oral argument before the State Supreme Court than all the rest of the points in the case put together.

What was actually done virtually amounted to an amendment to the list of assigned errors, enlarging the scope of assigned error 1 (a) (Ex. D, p. 92) to include the federal question raised by the denial of a bill of particulars, as permitted by Par. 438 of the Connecticut Practice Book, which reads as follows:

> "Except as otherwise provided, amendments to assignments of error may be filed *** at any time before the case is ready for assignment for hearing. None can be filed later except by consent of the adverse party indorsed thereon, or by leave of this Court ***."

Certainly the Brief of the State indicated a consent to such an amendment and the Reply Brief of the publisher indicated his intentional pursuit of such an amendment, at least one (or perhaps both) of which was filed before the case was ready for assignment for hearing. In any

even the latter half of Par. 438 quoted above would permit such an amendment as late as the oral hearing and at that time both the indorsement of the adverse party, the State had already been presented in the form of its Brief, but the leave of the Court was likewise evident in its interest in this constitutional question and its active participation in the discussion of it.

Justice Mellitz, who took a leading part in the discussion with Damiani at the oral hearing about the hardship entailed by the lack of a bill of particulars, showed by the opinion he wrote in this case that the constitutionality of Connecticut practice was still very much on his mind. For in his opinion (Ex. E, p. A2, l.18) he upholds the constitutionality of Par. 344 by citing the case of *State* v. *Davis*, 141 Conn. 319,321 (1954) where the court said:

> "any practical question that confronted the defendant could easily have been solved by obtaining a bill of particulars. Practice Book Par. 345 provides for this. *** The provisions in the rules for a bill of particulars *fully protected* the defendant's right under Article first, Par. 9 of the Connecticut Constitution 'to demand the nature and cause of the accusation.'

This upholding of Connecticut criminal practice provisions as being constitutional because they make provision for a bill of particulars confirms the very favorable comments by members of the State Supreme Court in their discussion with Damiani as to the importance of such a bill in this libel case.

The haphazard manner in which this constitutional question was brought to the attention of the State Supreme Court does not in any way detract from the fact that it actually got there in plenty of time to be acted upon. In fact it was acted upon favorably by Justice Mellitz in his opinion as pointed out above, but they evaded it so far as the publisher is concerned. This Court has held in *Carter* vs. *Texas*, 177 U.S. 442 (1899) that:

> "the question whether a right or privilege claimed

> under the Constitution or laws of the United States, was distinctly and sufficiently pleaded and brought to the notice of a state court, is itself a federal question, in the decision of which this court on writ of error, is not concluded by the view taken by the highest court of the state." Judgment reversed and cause remanded.

The principle stated in this case would appear to justify the Federal District Court to take testimony as requested in petitioner's motion of December 20, 1961 (Record p. 190) "for the hearing of oral testimony to establish the fact that the constitutional point as to his being deprived of a bill of particulars was actually presented to the Supreme Court of Errors on appeal and was argued and discussed at length in the oral argument on January 5, 1961, as set forth in Petitioner's Brief on pages 12 to 17, and especially in paragraph 3 on page 14." (Record p. 165). This motion was denied by Judge Anderson (R. p. 191) and his denial was made the basis of an appeal on April 2, 1962 (R. p. 219).

However, the State Record even as it now stands may contain sufficient recital of the presentation of this constitutional question to the State Supreme Court at the oral hearing on January 5, 1961 to justify this Court in accepting it as a fact without further inquiry. In the motion for reargument on April 6, 1961 petitioner points out (Ex. E, p. A9, l.9):

> "(1) the information did not sufficiently apprise the accused of the charges against him to enable him to properly prepare his defense and in consequence violated Article VI of the Amendments to the Constitution of the United States, requiring that the accused be informed of the nature and cause of the accusation, *and the Supreme Court of Errors failed to consider this point in its memorandum of decision;*"

The clause in italics endeavors to remind the court of the presentation of this constitutional point and its failure to

consider it in the opinion. Later, on May 31, 1961, in a motion for certification as to the consideration and rejection of this constitutional question (Ex. E, p. A33-A35), this discussion before the court and by the court of this federal question was recited at some length (p. A34) so that it could not be properly evaded, but it was evaded and the motion denied on the flimsy excuse that "the Claims made in it were not included in the assignments of error as set forth on pages 92-98 of the appeal record. Conn. Practice Book Sec. 409. By the Court, Baldwin, C.J." However, there was no denial by the Court of any of the facts recited in the motion. This would seem to constitute adequate proof found in the *record itself* that the federal question was actually, if not orderly, presented to the Highest State Court.

It should be pointed out that the State Supreme Court was faced with a dilemma which could be resolved only in the manner it chose to use. The Justices had already in their opinion declared State practice rules constitutional for the very reason that a bill of particulars could be demanded and obtained. They themselves in the course of the oral argument on January 5, 1961 conceded the denial of this constitutional right to the petitioner, which proves the question had been raised before them and decided favorably to him, but they just did not wish to grant him a favorable decision. Twice they evaded this point: first, by ignoring it in their opinion; second, by denial of the motion for reargument pointing out their omission; now, when confronted a third time with the full facts right out in the open, there was nothing left to do but what they did to save face. This points up what looks like a deep seated prejudice, which develops into the second constitutional point to be considered later.

HOW THIS COURT HAS TREATED A SIMILAR CASE

The same problem arose in the case of *Great Northern R. Co.* vs. *Sunburst Oil Co.*, 287 U.S. 358 (1932) where on page 366 Mr. Justice Cardozo speaking for the Court said:

"The first mention of the 14th Amendment to be found in the record is in the petition for rehearing where also there is a statement that the constitutional question was presented on the first hearing of the appeal and is now renewed and amplified. The answer to the petition for rehearing by counsel for the respondent is also in the record and contains what is in substance an admission that the constitutional point had been duly made at the time and in the manner stated by the moving party. The court in denying the application did so by reference to the opinion on a similar motion in a companion suit decided at the same time *** and nowhere in that opinion did it contest the statement of counsel that the effect of the 14th Amendment had been argued at every stage. *We have then in the record what is in essence the stipulation of counsel followed by the acquiescence of the court.* Whether this without more avoids the application of the general rule that a constitutional question is urged too late if put forward for the first time upon a petition for rehearing *** we are not required to determine, for here there is more, and that enough to bring the case within a *well-recognized exception.* The rule, general as it is, does not extend to cases where the constitutional question, however tardily raised, is considered and decided, *nor does it apply where the grounds of the decision supply a new and unexpected basis for a claim by the defeated party of the denial of a Federal right.* *** This case is clearly within the second of these exceptions, if it is not also within the first. *** *This latter objection the petitioner could not make in advance of the event.*"

The facts in the instant case are so closely similar to those in the Great Northern case that this court may readily find in this record what amounts in essence to a stipulation of counsel followed by the acquiescence of the court. The remarkable coincidence of the Great Northern case having also a *second* constitutional question arising out of the State court's decision itself is a

subject which will be commented upon later on when we come to the second federal question.

It remains to call attention to Judge Anderson's own appraisal of the value of this bill of particulars federal question. As reported in the transcript of Hearing held on October 23, 1961, found in the Record of this case, page 181, beginning at line 3, Judge Anderson said:

> "I am inclined to disagree with the trial judge on that point. But it is not for me really to go into that here. The mere fact that there was a trial de novo and a lot of information put in, — he cannot, on the basis of that, say that you must have known about what the information was and that you didn't need a a bill of particulars in the trial de novo in the Court of Common Pleas. Of course, that doesn't follow at all. At least in my opinion it doesn't. But that is nothing that would warrant the finding you asked me to make on this thing. The time to attack that was in the Supreme Court of Errors."

It is the purpose of this first point to urge before this Court that this denial of a bill of particulars was actually attacked in the Supreme Court of Errors, and that both the District Court and the Court of Appeals were in error in thinking and deciding otherwise.

Connecticut case law provides a mandate even in a much weaker case than the one at bar, *Prudence Crandall* vs. *State*, 10 Conn. 339 (1834) where the court found a fatal defect in the information which had not been assigned as an error in either the trial or appellate court, so technically could not be considered under the rules. It had neither been raised, briefed nor discussed by either side. It was a complete surprise to everybody. The court's action in reversing judgment was thus summed up in the 7th paragraph of the syllabus as follows:

> "But if the court, on inspection of the record, discover a fatal defect not specially assigned, it will be their duty to reverse the judgment."

II.

THE SECOND CONSTITUTIONAL QUESTION ARISING FROM THE CONTENTS OF THE DECISION ITSELF DISCLOSES A DEEP SEATED PREJUDICE SHARED BY ALL 5 MEMBERS OF THE STATE SUPREME COURT IN VIOLATION OF DUE PROCESS UNDER THE 14TH AMENDMENT.

The contents of the State Supreme Court decision in this case has already been analyzed on pages 15 to 21 *supra*. It discloses an amazingly misleading array of false material and conclusions wholly unjustified by the jury verdict of not guilty on the 19 counts. It discloses that:

1. They not only condoned the dozens of falsehoods inserted in the record by the trial judge and prosecutor, but they welcomed them and relied upon them as a basis for fabricating more of their own.

2. They refused to disturb the verdict on Count 12 for failure of defendant to question the sufficiency of the evidence, when there was no adverse evidence to be questioned, and when right before their eyes the defendant had in 3 places urged that the verdict on that count should be set aside because it was contrary to the evidence.

3. Time and again in their opinion they falsely referred to statements found by the jury to be true and non libelous, as being defamatory, scurrilous, abusive or offensive, in total disregard of the jury verdict and in contempt of Section 9, Article First of the State Constitution giving to the jury in all prosecutions for libel the right to determine the law and the facts. By such false statements in their opinion, following the jury verdict on 19 counts of not guilty, the 5 Justices themselves are guilty of libeling the publisher.

4. They falsely asserted that malice could be found in the deliberate repetition of various statements, when the jury by its verdict in ten instances had given the

lie to any such assertion.

5. They welcomed brutally false findings in large numbers as being fair and adequate aids for testing errors, which may be conceded to be one of the really honest statements in their opinion, but a sad commentary upon their standards.

6. They fabricated the most gigantic falsehood in the entire length and breadth of the libel prosecution by simply assuming, almost imperceptibly, the complete absence of evidence of truth and good faith, when actually truth testimony constituted almost the sole bulk of a six week trial and accounted for most all of the 1200 pages of testimony, (Record, p. 57, line 4) in addition to the many pages contained in the 19 Grapevine Press issues pronounced true by the jury and made a part of the finding, thus making a vast storehouse of truth testimony available in the record to disprove this monstrous falsehood.

The complete demolition of a six week trial by a simple false assumption surpasses belief. But the 5 Justices did it with aplomb and equanimity, resting easily in the knowledge that no practicing lawyer in the state would ever dare make a move to expose them.

To this evidence of unparalled prejudice against the publisher must be added the prejudice the same 5 Justices exhibited against him in five instances in the little contempt case opened up for inspection on pages 21 to 25 *supra*, which need not be repeated. That is prejudice indeed when 5 Supreme Court Justices in any state will resort to the commission of felonies to turn 2 cases against a publisher who deserved to win both, all for the sake of protecting the lawyer heads of the Vice Underworld of the State and the multitude of other lawyers who are gainfully employed to aid and protect them. Documentary evidence gleaned from the record alone is more than adequate to establish the prejudice of all 5 Justices. No oral testimony is needed.

"A WELL-RECOGNIZED EXCEPTION"

We return now to the quotation given on page 33-34.

supra, from the case of *Great Northern R. Co.* vs. *Sunburst Oil Co.*, 287 U.S. 358 (1932), which indicates a "well-recognized exception" to the general rule of requiring a federal question to be raised for consideration by the highest state court in advance of the decision in those cases *"where the grounds of the decision supply a new and unexpected basis for a claim by the defeated party of the denial of a Federal right."* Likewise it was the grounds of the decision of the State Supreme Court in the instant case which disclosed so great a prejudice against the publisher on the part of every one of the 5 Justices, none of whom expressed any dissent, all of whom concurred. It was a prejudice so excessive as to degree that it must be classed as abnormal and must have been felt to be a dire necessity by all 5 Justices to cover up what could break forth at any time as a state wide scandal involving scores of very prominent attorneys who had become involved with the vice underworld, which in turn was found by the jury to be under the leadership of two members of the bar who had been covered up beautifully for many years. (Ex K., Count 22, pp. 3-7). But even if the 5 Justices acted solely from altruistic motives to save from public disgrace a large bloc of fellow lawyers, they have no right to trifle with justice in such a manner and subject the highest state tribunal to derision and contempt.

Other cases recognizing this exception are:
Missouri vs. *Gehner*, 281 U.S. 313 (1930), where at page 320 Mr. Justice Butler in his opinion said:

> "It is well settled that this court will not consider questions that were not properly presented for decision in the highest court of the state. Ordinarily it will not consider contentions first made in a petition to the state court for rehearing where the petition is denied without more. *Citizens Nat. Bank* vs. *Durr*, 257 U.S. 99, 106. But here the Company, at the first opportunity, invoked the protection of the federal constitution and statute. * * * It is clear that appellant sufficiently raised in the highest court of the state the federal questions here presented and is

entitled to have them considered." (*Judgment reversed*)

Brinkerhoff-Faris Trust Co. vs. *Hill*, 281 U.S. 673 (1930); where a new decision of a state court overruled a 6 year old decision 21 months after the plaintiff's time to apply for tax relief had expired and left it without redress. Mr. Justice Brandeis in his opinion on page 677 said:

> "The plaintiff seasonably filed a petition for a rehearing in which it recited the above facts and asserted, in addition to its claims on the merits, that * * * *the Court transgressed the due process clause of the 14th Amendment.* The additional federal claim thus made was timely, since it was raised at the first opportunity. * * * The petition was denied without opinion. This Court granted certiorari. * * * We are of opinion that the judgment of the Supreme Court of Missouri must be *reversed*, because it has denied to the plaintiff due process of law — using that term in its primary sense of an opportunity to be heard and to defend its substantive right."

Herndon vs. *Georgia*, 295 U.S. 441 (1935) is a case where the petitioner after raising a federal question for the first time in a motion for rehearing, claimed this same exception to the rule, which Mr. Justice Sutherland commented upon in his opinion at page 444 as follows:

> "There is no doubt that the federal claim was timely if the ruling of the state court could not have been anticipated, and a petition for rehearing presented the first opportunity for raising it."

HOW AND WHEN MUST THIS EXCEPTION TO THE RULE BE ASSERTED?

There seems to be no law on this subject prescribing how and when a federal question arising out of a high state court decision must be asserted. It is quite evident that in most of the cases reported, it has been raised in a motion for rehearing and that has invariably been considered adequate. But in this case it was impossible to

raise it that soon, for reasons set forth *supra* on pages 28 & 29.

The decision was made public April 4, 1961, the motion for rehearing had to be filed 2 days later on April 6, 1961 to stay the 20 day jail sentence for which mittimus had been issued promptly on April 4th and under which the petitioner had been picked up by the sheriff and held in custody until he got a motion for stay before the trial court. It was not until May 24, 1961 that the petitioner had enough facts in his possession about the case to realize how he had been deprived of due process of law by the conduct of the 5 Supreme Court Justices, and on that day he filed a 14 page section of another motion setting forth a substantial number of the facts in both the libel case and the companion contempt case to establish the denial of due process and requesting relief from the State Supreme Court. (Ex. E, p. A13-27)

The case of *Saunders* vs. *Shaw*, 244 U.S. 317 (1917) seems to be particularly in point because of the informal way in which the federal question arising out of a decision of the Louisiana Supreme Court was brought to the attention of that court. The following quotation from the opinion of Mr. Justice Holmes at page 320 elucidates the facts and the court's decision:

> "The question remains whether the writ of error can be maintained. The record discloses the facts but does not disclose the claim of right under the 14th Amendment until the assignment of errors filed the day before the Chief Justice of the State granted this writ. Of course ordinarily that would not be enough. But when the act complained of is the act of the Supreme Court done unexpectedly at the end of the proceeding when the plaintiff in error no longer had any right to add to the record, it would leave a serious gap in the remedy for infraction of constitutional rights if the party aggrieved in such a way could not come here. The defendant was not bound to contemplate a decision of the case before his evidence was heard, and therefore was not bound

> to ask a ruling or to take other precautions in advance. The denial of rights given by the 14th Amendment need not be by legislation. * * * It appears that *shortly after the Supreme Court had declined to entertain the petition for rehearing, the plaintiff in error brought the claim of constitutional right to the attention of the Chief Justice of the State by his assignment of errors.* We do not see what more he could have done." (*Judgment Reversed*)

It is to be noticed that the invasion of constitutional rights arose out of the decision and was in no formal way presented to the State Supreme Court for action. The only notice was an informal one contained in a writ of error to the United State Supreme Court which had to pass through the hands of the state Chief Justice for confirmation of the facts set forth therein. It would seem that the petitioner's motion of May 24, inartistic though it may have been, at least served to lay the new federal claim squarely before the full court for action if it saw fit, and in that respect did a better job than appears to have been done in the *Saunders* case. The refusal of the Connecticut State Court to permit the filing of this motion was simply its method of evasion and would seem to justify federal action.

III.

CIRCUMSTANCES OF SUCH PECULIAR URGENCY EXIST IN THIS CASE AS TO REQUIRE PROMPT FEDERAL INTERVENTION AND TO CALL FOR A RELAXATION OF THE EXHAUSTIVE REQUIREMENT.

In the light of what has gone before in this petition it might be more fitting to phrase this third question somewhat in the following manner:

> "Would a state appellate record plastered with falsehoods invented by the trial prosecutor and adopted as his own by the trial judge, who worked together thus to deceive the 5 Justices of the Supreme

Court of Errors; who, thereupon, warmly welcomed the obvious falsehoods and a variety of irrelevant matters sandwiched into the findings, with evident relish, and relied upon them to manufacture new and even more gigantic falsehoods, which they artfully concealed in their opinion so as to escape rendering a decision favorable to the petitioner both in this libel prosecution and in a companion contempt case; — would such a state of affairs, readily discernible from the record itself, suffice to establish the existence of circumstances rendering Connecticut State process ineffective to protect the rights of the petitioner, and thus entitle him to a relaxation of the exhaustive requirement, and bring him within the exception set forth in 28 U.S.C. Sec. 2254, and in numerous cases, entitling him to speedy relief in the federal courts?"

Although this question was not propounded to Judge Anderson in so many words, he had to face it because he had before him just about every fact and circumstance related in this petition and perhaps a few more as contained in petitioner's brief and reply brief submitted to him and contained in the Record pages 152 to 189 and 198 to 214.* And although he cited 6 cases and 28 U.S.C. Par. 2254 as authority for his insistence upon the exhaustion of state remedies, he completely overlooked the clause in 2254 and the clean cut discussion in 4 of his 6 cases as to how the exhaustive requirement is relaxed when circumstances of peculiar urgency exist rendering state process ineffective to protect the rights of the prisoner.

Upon appeal to the Court of Appeals for the 2nd circuit the petitioner stressed this point far in excess of his other points and 85% of the written part of his oral argument was devoted to this point. Yet not a word about it appears in that Court's opinion as will be seen by reference to page A-1 of the appendix herein. And this point was again stressed in full measure in the petition for rehearing filed in that Court on No-

* 3 additional copies of each of these two briefs are being sent with the other exhibits, for reference use of any member of the Court who may care to examine same.

vember 7, 1962 and denied November 21, 1962, still without any comment on this point when the circumstances which have arisen in this and the kindred contempt case surpass in urgency anything and everything petitioner has encountered in continental United States, with incontrovertible documentary evidence contained in both records to substantiate the circumstances of peculiar urgency.

Petitioner is indebted to this Court for an opinion rendered in the case of *Mooney* vs. *Holohan*, 294 U.S. 103 (1935) which paints an accurate and vivid picture of the instant case when it is compared with the circumstances of that case as appears in the following quotation from the opinion where the Court declares that the requirement of due process of law

> "cannot be deemed to be satisfied by mere notice and hearing if a state has contrived a conviction through a pretence of a trial which in truth is but used as a means of depriving a defendant of liberty through a *deliberate deception* of court and jury by the *presentation of testimony known to be perjured.* * * * *A contrivance by a State to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation.*"

It will be noticed the perjury and deception occurred only in the *trial court* and there is nothing to show that it had reached the ranks of the highest court in the state. For that reason the necessity for the exhaustion of state remedies was still present. But had the perjury and deception permeated the appellate record and the behavior and written opinions of the State Supreme Court to the extent that it has in this libel and contempt case, there would have been present circumstances of such peculiar urgency as to require prompt federal action.

So accurate and apt is the language used in this *Mooney* opinion, the publisher used it as his authority to point out to the 3 Court of Appeals Judges in his oral argument that this entire libel prosecution from

the first arrest on October 27, 1958 right up to and including the published opinion of the Supreme Court of Errors on April 4, 1961, was nothing more than a giant effort at *intimidation*, to which every prosecutor and every judge, from the lowest to the highest, contributed his bit expecting that the effort of each one would accomplish or help to accomplish, the objective of stopping all further publication about the Vice Underworld and its satellites and adherents among the legal profession. They were using public monies with which to deceive the public and to contrive a continuation of the concealment of their illegal actions which they have enjoyed so long. Under the law, for what they have done in this case, everyone of them is subject to disbarment, and prosecution on many counts for the commission of a variety of felonies. The subject matter contained in the petitioner's publications is the key which has unlocked the doors which open up a vista of corruption undreamed of by the petitioner when he started, but spreads out before this Court *extraordinary circumstances — without precedent*, such as to eclipse even that landmark of such cases, *Moore* vs. *Dempsey*, 261 U.S. 86 (1923) where 5 negroes were convicted in a state court of Arkansas for the murder of a white man after a trial lasting three quarters of an hour, and the jury brought in its verdict after deliberations of less than 5 minutes. This Court did not hesitate to enforce the constitutional rights of those 5 negroes who were victims of state wide prejudice.

Pyle vs. *Kansas*, 317 U.S. 213 (1942) is another case of perjured testimony worthy of attention. Mr. Justice Murphy in the opinion at page 216 said:

> "Petitioner's papers are inexpertly drawn but they do set forth allegations that his imprisonment resulted from *perjury testimony, knowingly used by the state authorities* to obtain his conviction, and from the *deliberate suppression by those same authorities of evidence favorable to him*. These allegations sufficiently charge a deprivation of rights guaranteed by the Federal Constitution, and if proven, would entitle petitioner to release from his present custody.

> They are supported by the exhibits referred to above, and nowhere are they refuted or denied. The record of petitioner's conviction while regular on its face, manifestly does not controvert the charges that perjured evidence was used, and that favorable evidence was suppressed with the knowledge of the Kansas authorities. No determination of the verity of these allegations appears to have been made. The case is, therefore remanded for further proceedings. * * * *Reversed and remanded.*"

The Court is reminded that all falsifications and perjuries and suppressions of evidence in the libel case as well as in the contempt case, are thoroughly documented and ascertainable from the *record* without outside proof. The fact that the 23 newspapers which formed the basis for the 23 counts of libel were all made part of the trial judge's findings, constitutes them a part of the *record* and thus gives them a more advantageous position than had they been left as mere evidence or exhibits.

Ex Parte Hawk, 321 U.S. 114, 117 (1944) is another case where the court's decision upheld the necessity for exhaustion of state remedies, but at the same time offered a very illuminating discussion of exceptional circumstances which is worth quoting:

> "The statement that the writ (of habeas corpus) is available in the federal courts only 'in rare cases' presenting 'exceptional circumstances of peculiar urgency,' often quoted from the opinion *Ex. rel. Kennedy* vs. *Tyler*, 269 U.S. 17, was made in a case in which the petitioner had not exhausted his state remedies and is inapplicable to one in which the petitioner has exhausted his state remedies and in which he makes a substantial showing of a denial of federal right." "* * * But where resort to state court remedies has failed to afford a full and fair adjudication of the federal contentions raised, either because the state offers no remedy * * * or because in the particular case the remedy afforded by state law proves in practice unavailable or seriously inadequate

(*Moore* vs. *Dempsey*, 261 U.S. 86, *Ex parte Davis*, 318 U.S. 412) a federal court should entertain his petition for habeas corpus *else he would be remediless*. In such a case he should proceed in the federal district court before resorting to this court by petiton for habeas corpus."

Ex. rel. Kennedy vs. *Tyler*, 269 U.S. 17 (1925) likewise affirmed the dismissal of a writ for habeas corpus on the ground that the case presented no exceptional and imperative circumstances to entitle the petitioners to relief in a federal court. But Justice Sutherland stated in the opinion of the court that:

> "The due and orderly administration of justice in a state court is not to be thus interfered with save *in rare cases where exceptional circumstances of peculiar urgency are shown to exist.*" and cites 12 cases in support.

Mr. Justice Black in the court's opinion in *Frisbie* vs *Collins*, 342 U.S. 519, 521 (1952) sheds additional light on this subject:

> "The Court of Appeals did expressly consider the question of exhaustion of state remedies. It found the existence of "*special circumstances*' which required prompt federal intervention 'in this case.' * * * It is sufficient to say that there are sound arguments to support the Court of Appeals conclusion that prompt decision of the issues raised was desirable. We accept the findings in this respect. * * * whether such (special) circumstances exist calls for a *factual appraisal by the court in each special situation*. Determination of this issue, like others, is largely left to the trial courts subject to appropriate review by the courts of appeal."

Darr vs. *Burford*, 339 U.S. 200 (1950) recognizes at page 219 that an "extraordinary" situation, calling for the relaxation of this strict exhaustion rule, is presented when the petitioner is able to show that circumstances of "peculiar urgency" exist, "exceptional circumstances" which require "prompt federal intervention." But found

no such exceptional circumstances existed in that case, and consequently the dismissal of the prisoner's petition for habeas corpus was affirmed.

A search of the entire literature of the law has not revealed to the petitioner any case more shocking to the conscience or more calculated to discredit the law than the resort of the 5 Justices of the Connecticut Supreme Court of Errors to planting what they knew to be perjuries in two opinions involving one who dared publish a whole book of truth about the lawyers and judges who built up and cater to the vice underworld of the state. One case that shocked this court is *Rochin* vs. *California*, 342 U.S. 165 (1951) where this Court granted certiorari because of a serious question raised under the due process clause of the 14th Amendment. The State Appellate court had affirmed the conviction of a prisoner who had been assaulted and battered, falsely imprisoned and had the contents of his stomach extracted by force by officer action. In reversing the state judgment, Mr. Justice Frankfurter said (Pages 172-173):

> "This is conduct that shocks the conscience. Illegally breaking into the privacy of the petitioner, the struggle to open his mouth and remove what was there, the forcible extraction of his stomach's contents — this course of proceeding by agents of government to obtain evidence is *bound to offend even hardened sensibilities*. They are methods too close to the rack and the screw to permit of constitutional differentiation. * * Due process of law * precludes defining * these standards of conduct more precisely than to say that Convictions cannot be brought about by methods that offend a 'sense of justice'. * * It would be a stultification of the responsibility which the course of constitutional history has cast upon this court to hold that in order to convict a man the police cannot extract by force what is in his mind, but can extract what is in his stomach. * *
>
> Coerced confessions offend the community's sense of fair play and decency. So here, to sanction the

brutal conduct which naturally enough was condemned by the court whose judgment is before us, would be to *afford brutality the cloak of law*. Nothing would be more calculated to discredit law and thereby to brutalize the temper of a society."

THE CRUX OF THIS CASE

In none of the cases heretofore cited nor in any of those cited by Judge Anderson or the Court of Appeals to justify their conclusions, has the brutality, or the perjury, or the mob violence, or the misconduct complained of as infringement of a constitutional right, risen higher than those conducting the trial court proceedings or the proceedings prior thereto. In none of them has the integrity of the entire bench of judges in the highest state court been in question. Their judgment may be reversed or their decision altered in various ways, but never before this libel and this contempt case has felonious conduct upon the part of the entire high state court bench been pin pointed and established by documented proof. This presents *an important question of federal law which has not been, but should be, settled by this Court*. And this is one of the leading grounds mentioned in No. 19 of the Rules of this Court, in subdivision (b) as justifying a review on writ of certiorari. Petitioner is in great sympathy with Judge Anderson in his desire to escape a decision on this vastly delicate issue. It was hoped the three Judges in New York City Court of Appeals would find it easier to tackle the problem and decide it as their best judgment might dictate. When they ignored the subject completely it was hoped that all nine of the Court of Appeals Judges sitting in *banc* would see fit to pass on it. They in turn indicated a unanimous desire to leave it alone. (See page A-2) That leaves this Court in Washington as the last bastion of defense in the nation for the petitioner who is a citizen both of Connecticut and of the nation.

CONCLUSION

It is the hope and prayer of petitioner that this Court may find that one or both of the constitutional questions

herein raised have been presented in such a manner to the Supreme Court of Errors in the State of Connecticut, as to warrant this Court in concluding that the State court's failure to act on them was evasion, rather than lack of opportunity; and that the infringement upon his constitutional rights in either one or both instances is sufficient justification for the granting of the petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit; or that this Court may find justification for such action and the relaxation of the exhaustive requirement by reason of the existence of exceptional circumstances of peculiar urgency which render state process ineffective to protect the rights of petitioner in this case, wherein his only offense has been to publish the truth concerning numerous leading members of the bar in the State of Connecticut who have organized and directed or aided the hidden operations of the vice underworld in said State with such outstanding success that few lawyers or judges remain who dare oppose them in any case or proceeding where their interests come in conflict with those of the ordinary citizen, such as the petitioner happens to be.

It is the further hope and prayer of petitioner that this Court may in the wisdom of its own discretion find a way to grant his petition for a writ of habeas corpus through appropriate instructions to the court or courts below, to both of which, including both Judges and court officials, the petitioner wishes hereby to acknowledge his indebtedness for exceptional courtesy and help and consideration, at all times and in all emergencies, and that applies likewise to all officials with whom he has had contact in the Clerk's office of this Court in Washington within the past two years.

Respectfully submitted,

LORING A. WHITESIDE,
Petitioner, pro se.
South Pease Road, Woodbridge,
New Haven 15, Connecticut

February 13, 1963

APPENDIX

UNITED STATES COURT OF APPEALS

For the Second Circuit

No. 56 - October Term, 1962 Argued October 15, 1962
Docket No. 27,551 Decided October 24, 1962

UNITED STATES EX. REL. LORING J. WHITESIDE,
Relator-Appellant

vs.

J. EDWARD SLAVIN and GEORGE R. TIERNAN,
Respondents-Appellees

Before: Waterman, Hays and Marshall, Circuit Judges

Appeal from a judgment of the United States District Court for the District of Connecticut denying a petition for habeas corpus because of failure to exhaust state remedies. 28 U.S.C. Par. 2254. Affirmed.

Loring J. Whiteside, Relator-Appellant, pro se.

George R. Tiernan, New Haven, Conn., for Respondents-Appellees

PER CURIAM:

This is an appeal from a denial of a petition for a writ of habeas corpus by the United States District Court for the District of Connecticut. After a full hearing Judge Anderson filed adequate findings and conclusions of law supporting his denial of the writ for failure to exhaust state remedies. We affirm.

Petitioner-appellant on March 24, 1959 was convicted of four counts of a twenty-three count indictment for criminal libel after a trial before a jury in the Court of Common Pleas of the State of Connecticut. This conviction was affirmed by the Supreme Court of Errors, 145 Conn. 208, 169 A. 2nd 260 (1961); reargument was denied and the U.S. Supreme Court denied certiorari.

Petitioner seeks relief in the federal courts on two major assertions. He claims that the Court of Common Pleas violated the Sixth Amendment to the Constitution

of the United States by denying his motion for a bill of particulars, and that alleged prejudice against him by the Supreme Court of Errors of Connecticut deprived him of due process guaranteed by the Fourteenth Amendment.

The courts of Connecticut have not passed upon the merits of either of these asserted rights. Habeas corpus in the federal courts is presently unavailable to petitioner, 28 U.S.C.A. Par. 2254; *Brown* v. *Allen*, 344 U.S. 443; *Darr* v. *Burford*, 339 U.S. 200; *United States ex rel. Williams* v. *LaVallee*, 276 F. 2d 645 (2 Cir. 1960).

We affirm.

Petition for rehearing denied November 21, 1962

SRW
PRH
TM
USCJJ

Petition for rehearing in banc:

Present: Hon. J. Edward Lumbard, Chief Judge
Hon. Charles E. Clark
Hon. Sterry R. Waterman
Hon. Leonard P. Moore
Hon. J. Joseph Smith
Hon. Henry J. Friendly
Hon. Irving R. Kaufman
Hon. Paul R. Hays
Hon. Thurgood Marshall

Circuit Judges

No active circuit judge having requested that the case be reheard in banc, the petition is denied. November 21, 1962.

J. Edward Lumbard, Chief Judge

UNITED STATES DISTRICT COURT

District of Connecticut

WHITESIDE vs. SLAVIN, ET AL. Civil No. 8996

RULING OF ANDERSON, J.

(Record, pp. 215-217)

RULING ON PETITION FOR HABEAS CORPUS.

On March 24, 1959 a jury in the Court of Common Pleas for New Haven County, State of Connecticut, returned a verdict of guilty against the petitioner on four counts of an information containing twenty-three counts of criminal libel. On March 28, 1959 the court sentenced him to thirty days in jail and fined him $125 on each of the four counts on which he was convicted. The sentences were ordered to run consecutively and their execution was suspended after five days had been served on each; thereafter he was to remain on probation for two years. Throughout the trial and the subsequent appeal to the Supreme Court of Errors, the petitioner was represented by counsel which he had chosen and retained. On the appeal, which the petitioner took in February, 1960, the conviction in the lower court was affirmed by the Supreme Court of Errors on April 4, 1961, 145 Conn. 208. He moved for reargument and this motion was denied April 11, 1961.

On May 31, 1961, petitioner asked the Supreme Court of Errors to certify that it had passed on the constitutional question raised by the trial court's denial of petitioner's motion for a bill of particulars. This motion was denied on June 7, 1961, on the ground that it had not been included in the assignments of error in the appeal record. Thereafter the petitioner applied to the Supreme Court of the United States for a writ of certiorari which was denied October 9, 1961.

In the present petition to this court Whiteside asserts two grounds, on either of which he claims the writ should issue. The first is the denial by the Court of Common Pleas of his motion for a bill of particulars prior to the trial in that court. He alleges that this denial deprived him of his rights under the 6th Amendment to the Constitution of the United States. The second is alleged prejudice against him by the Supreme Court of Errors of

Connecticut, which thereby denied him due process under the 14th Amendment to the Constitution of the United States.

At no time have the courts of the State of Connecticut passed upon the merits of the Federal Constitutional questions raised by the petitioner in his application.

The petitioner has failed to petition for and seek the issuance of a writ of Habeas Corpus in the courts of the State of Connecticut under the provisions of Chapter 915 of the General Statutes of Connecticut, Revision of 1958. (Sec. 52-466)

Conclusions Of Law.

1. This court has jurisdiction of the subject matter and the parties in the action.

2. The petitioner has failed to exhaust his state remedies.

3. The petition is, therefore, denied.

Discussion:

Title 28 U.S.C. § 2254 provides for issuance of the writ of Habeas corpus on behalf of one in state custody only where the petitioner has exhausted his remedies in the state courts. While the petitioner does not need to show that he availed himself of the collateral relief provided by a state where such relief would have been based on the same issues and evidence already passed upon by direct review, such remedies have not been exhausted if the courts of the state have not had an opportunity to decide the questions in the petition to the Federal Court. *Brown* vs. *Allen*, 344 U.S. 443 (1953); *Darr* vs. *Burford*, 339 U.S. 200 (1950); *Ex parte Hawk*, 321 U.S. 114 (1944); *United States* vs. *LaVallee*, 276 F.2d 645 (2 Cir. 1960); *United States* vs. *Richmond*, 279 F.2d 170 (2 Cir. 1960), *aff'd United States* vs. *Richmond*, 177 F. Supp. 504 (D. Conn. 1959); *United States* vs. *Walker*, 111 F. Supp. 455 (D. Conn. 1952), *aff'd* 203 F.2d 563 (2 Cir. 1953).

The petition for a writ of habeas corpus is, therefore, denied.

Dated at New Haven, Connecticut, this 31st day of March, A.D. 1962.

ROBERT P. ANDERSON,
United States District Judge

THE 16 ALLEGED LIBELS IN THE 4 GUILTY COUNTS SHOWING WHERE THEY MAY BE FOUND IN THE 19 NOT GUILTY COUNTS

with excerpts therefrom or a brief description

GUIDE: The alleged libels are printed in caps and listed consecutively in the order in which they appear in guilty counts 7, 9, 12 & 17. References to not guilty counts are shown in italics, thus — 1-4-*Par.* 3, meaning, Count 1, page 4 and paragraph 3.

All such references may be found in Exhibit K, where the 23 newspapers are bound in plastic cover in consecutive order with dividing sheets imprinted in red and numbered according to the COUNT number.

GUILTY COUNT 7 — FINDING 24 (Ex. D, p. 23, or Ex. K)

1. JOHN F. MONAHAN, CHIEF OF POLICE IN WEST HAVEN, WAS SUBJECT TO THE ORDERS OF ONE FRANK RICCI, A GAMBLER AND UNDERWORLD FIGURE:

2. THAT THE CHIEF WOULD STICK A KNIFE INTO YOU, IF YOU DON'T WATCH OUT."

As clearly appears from the quotation added by Judge Wall in Par. 2 of finding 24, these 2 assertions were made by a prostitute madam referred to as Madam X, and *not by the publisher.* His two comments were:

"One day I was telling her * * about the 100% cooperation which Chief Monahan had indicated to me in affording protection to Angelo and his family."

When Madam X made the knife sticking accusation, the publisher said:

"That I could not understand after the nice way the Chief had received me."

The publisher was defending and not accusing the Chief. The prosecutor was seeking to imply a libel by putting the madam's words into the publisher's mouth.

3. THE ALDERMANS (SIDNEY & RALPH) "ARE SO POWERFUL THEY WOULD STOP AT NOTHING. DO YOU KNOW WHAT THAT MEANS? THEY WOULD KILL YOU."

1-4-*Par.* 3

Sydney and Ralph Alderman paid Kopkind to build an organ to extinguish rebellious souls. Its foot pedals strike terror in the hearts of those towards whom the sounds are directed.

3-3-*Line* 1

Sydney Alderman "is the owner and czar of the GREAT ORGAN built by Kopkind over the years."

3-3-*Par.* 2

Under the heading "DEATH DEATH DEATH" follows a paragraph marked "2" which elaborates on the terror and fear of death among the trusted employees of the underworld.

15-1-*Par.* 2

Near the end is said "FEAR OF DEATH is ingrained deeply into the lives of the lesser figures and holds them in check so that they dare not divulge either who they work for, where they go or whence they come."

4. SYDNEY ALDERMAN MAINTAINED A FRONT AS A LAWYER AND HIS BROTHER AS A TAILOR, AND QUIETLY BUILT UP ONE OF THE BEST MANAGED UNDERGROUNDS IN AMERICA WITH THE AID OF KOPKIND.

1-4-*Par.* 3

Sydney & Ralph Alderman paid Kopkind "for the work he did in building and perfecting the instrument. One would think that Sydney would not need a lawyer, being one himself. But that is where one would be mistaken, because although publicly listed as a lawyer, Sydney is not known as a *practicing* lawyer. That is only his 'front'."

16-3-*Par.* 3

"Sydney's front is, of course, his attorneyship, appearing on his door and in the telephone book, but *he does*

not practice law. It is very nice of the Connecticut State Bar to cooperate with Sydney to this extent. Raises the standard of the profession to a high level." (See 16-3-Par. 2 for Ralph's "front".)

22-4-*Par.* 4

"Kopkind is the KING-PIN. It is his genius * * which formed New Haven's UNDERWORLD into an almost impregnable fortress. * * Neither Sydney nor Ralph Alderman could ever have done the job Kopkind has done for them. He has earned every cent they have paid him. He has covered them up as well as himself."

22-6-*Par.* 2

Lawyer front of Sydney and tailor front of Ralph described as they build up a multi-million dollar rackets business, with Kopkind's efficient help since 1929 when he was graduated from Yale Law School.

GUILTY COUNT 9 — FINDING 28 (Ex. D, p. 24 or Ex. K)

5. THAT KOPKIND "IS PULLING SUCH CRAP AS HE PULLED WITH ANGELO IN OTHER CASES ALSO."

15-1-*Par.* 2, *Line* 5

"Kopkind * * is the *legal architect* & organizer of New Haven's UNDERGROUND, its rackets, its prostitution & other criminal activities."

16-2-*Par.* 4

The underground syndicate seems to recognize a real estate racket as entitled to its protection "same as lotteries, baseball pools, prostitution and dope." Kopkind was protecting a real estate racket in case of Angelo.

23-4-*Line* 26

"The racketeers in New Haven control not only the Board of Zoning Appeals and its decisions, but the City Court and its decisions, the Probate Court and its decisions and conduct, the department of Public Works and its policies and the DEMOCRATIC PARTY in New Haven, which has become so bold it puts up racketeers for State Senate in the 9th District and asks

the voters to place their confidence in EDDIE MARCUS, who never hesitates to play confidence games and utilize false pretences to ruin hard working men with families."

23-4-*Line* 11

"the ZONING APPEAL RACKET * * is chicken feed beside numbers, lotteries, baseball and football pools and even prostitution and narcotics."

6. THE HEAD MEN IN THE NEW HAVEN AREA OF VICE OF ALL KINDS, INCLUDING GAMBLING & PROSTITUTION, ARE RALPH & SYDNEY ALDERMAN, AND KOPKIND IS THE LEGAL BRAINS AND ORGANIZER OF THE OPERATING TECHNIQUE.

6-1-*Last Par.*

Kopkind has produced a smooth running, extraordinarily efficient vice machine.

14-4-*Line* 8

"Underworld of New Haven under the very competent legal direction of Kopkind & Flynn, has been working for many years to fasten their tentacles upon the body politic." (The 2 Alderman boys exposed in line 28, same page)

15-1 *Par.* 2, *Line* 20

"Kopkind and his helpers have been putting together the most invincible shelter for vice that has ever been erected in the history of this country."

18-4-*Line* 15

"Kopkind was king-pin in the UNDERWORLD OF NEW HAVEN for vice lords, Sydney & Ralph Alderman."

18-2*S*-*Line* 9

"deep corruption in New Haven, headed up by Sydney and Ralph Alderman with Kopkind as high legal adviser and sculptor of the hidden but daily routines of thousands employed in New Haven's OWN UNDERGROUND."

22-3-*Last Par. Line* 1

"Bernard P. Kopkind is the lord high 'mucky muck' of

New Haven's vice set up."

22-4-*Par.* 3

"Kopkind is the KING-PIN. It is *his* genius, *his* brilliance, *his* demoniac possession which formed New Haven's UNDERWORLD into an almost impregnable fortress, unassailable and impervious to the most persistent attacks. Neither Sydney nor Ralph Alderman could ever have done the job Kopkind has done for them. * * He has covered them up as well as himself so that the most sophisticated men about town never dreamed that Sydney or Ralph had any connection whatsoever with vice in any form."

7. KOPKIND SUPPLIED GOON TACTICS IN HIS OWN PERSON.

3-3-*Sec.* (1), *last line*

Kopkind follows "the gangster policy if the mouse won't scare."

8-4-*Par.* 2, *last 6 lines*

Kopkind, Flynn, Sydney & Ralph "will not tolerate the slightest opposition. They do not have to. They have their *own police force.* Their own GOONS. And from what MADAM X says, they run towns, give orders to our own police, bribe New Haven mayors with mistresses, and we have had revealed right before our own eyes, how they dictate to Judge Shanley and the machinery of the Probate Court."

15-2-*Par.* 2, *Line* 3

Kopkind did "both head work and some leg work in setting up a perfectly organized vice ring."

15-3-*Line* 13

"You have some evidence of his (Kopkind's) power in what he and his gangsters have attempted to do to put me out of business."

19-4-*Sec.* 2, *Line* 6

"On the lower level he (Kopkind) is the city's most astute liar, crook and gangster and has been for 29 years.

8. "HE (SAMUEL ALDERMAN) COULD NOT HAVE TOLERATED FOR A MINUTE THE HELLISH, ROTTEN, UNDERHANDED

FRAUDULENT BETRAYAL OF A CLIENT AND A FATHER, WHICH KOPKIND AND FLYNN CONSIDER LEGITIMATE SPORT FOR LAWYERS TODAY."

2-1-*Par.* 1

"No firm of attorneys in the entire New Haven area, and perhaps in the State, are so well equipped to protect deceitful and fraudulent clients as the modest but powerful firm of Kopkind & Flynn. They *enjoy* the distinction, and roar and laugh at the victims as this sheriff or that sheriff is commissioned to shove small children and furniture out on the street in a perfectly legal manner, or as the bodies of compassionate persons fall in the street, exhausted from doing for nothing, save love, work which KOPKIND & FLYNN'S clients were paid to do, but didn't."

4-5-*Lines* 25 *and* 29

when the big bosses are ring snorted by Kopkind & Flynn, everything goes to pot. ** when KOPKIND & FLYNN snap their fingers, watch Shanley dance —"

8-3-*Last par.*

Describes how Halprin "connives with Kopkind to cheat Angelo out of $1000 so that Kopkind's cronies can seize his house and render him penniless and incapable of paying Halprin's bill." The entire page is devoted to the story of how the facts were unearthed as to how the Pouzzner firm of which Kopkind & Flynn were members, betrayed its client, Angelo Chairamonte.

15-1- *Last Par.*

"It was the Pouzzner firm that betrayed Angelo, its client, who deceived him.. ** that colluded with Marcus to play Angelo for a sucker and betrayed him —" (Kopkind & Flynn both members of this firm).

18-4-*Par.* 2

This paragraph contains an excellent discussion of how Kopkind as "king-pin in the UNDERWORLD OF NEW HAVEN for vice lords Sydney and Ralph Alderman, ** owed greater allegiance to Marcus, another member of the UNDERGROUND, than he would to his own clients on the upper level."

19-2-*Last Par.*

"When Angelo hired the firm of Pouzzner, Hadden, Kopkind & Hadden to represent him, they betrayed him into the hands of Marcus"

22-4-*Par.* 2

Kopkind accepted Angelo as a client, took his money for the job "and then betrayed Angelo right into the fradulent hands of Marcus & Longbotham." "YOU HAVE A PICTURE OF THE MOST INFAMOUS BETRAYAL ANY LAWYER EVER PERPETRATED UPON A CLIENT."

GUILTY COUNT 12 — FINDING 34 (Ex. D, pp. 25-26 or Ex. K)

9. KOPKIND AND FLYNN AND THE ALDERMAN BROTHERS WERE INTRENCHED IN A VARIETY OF RACKETS.

(*Note* — The Alderman brothers are not named as libelees in Count 12, so if Judge Wall had cared to observe practice rule in Section 400 permitting only relevant facts to be set forth in findings, he would have omitted them. It is easy to see how it is hard to omit them in any racket-discussion, because they have been the star clients of Kopkind and his 2 firms for well over 30 years.)

14-4-*Line* 8 *and Line* 20

"The UNDERWORLD of New Haven under the very competent legal direction of the firm of KOPKIND & FLYNN has been working for many years so to fasten their tentacles upon the body politic in and around New Haven, so that nothing short of the DAY OF JUDGMENT can suffice to dislodge them. ** A variety of hoodlums have been threatening me over the phone, various hatchet men have been inspecting our premises, threats with and without compound profanity have been hurled at me by anonymous gangsters, all because I persist in exposing Kopkind and Flynn and the two Alderman boys and their stooges."

8-4-*Par.* 2

See this quote under LIBEL 7. Also see all 7 quotes under LIBEL 6.

10. THEY (KOPKIND & FLYNN & THE ALDERMANS) SPILL OVER INTO REAL ESTATE RACKETS AND STRIP DECENT CITIZENS OF THEIR MONEY;

8-4-*Line* 6

Jack Halprin in "collusion with Kopkind to fleece Angelo and Barbara and their children." Same paragraph at bottom of preceding page explains how Halprin "connives with Kopkind to cheat Angelo out of $1000 so that Kopkind's cronies can seize his house and render him penniless and incapable of paying Halprin's bill."

15-1-*Par.* 2

See this quote under LIBEL 5.

16-2-*Par.* 4

See this quote under LIBEL 5.

16-4-*Par.* 2 & 3

Real estate rackets developed to a high degree of efficiency in New Haven. "Kopkind and his satellites comprise the worst and most dangerous single menace in the city. * * *He simply must be clipped.* AND THE ALDERMAN BOYS." Edward L. Marcus who had charge of baseball and football pool betting among Yale students while he was in the Law School, was entitled to protection by the syndicate, "but the extension of that protection to (his) *real estate rackets* is something else again." The underground must have added that as a new department.

19-2-*Entire Page*

The Waldner Real Estate Racket described. "It never occurred to me that Waldners might have any connection with New Haven's own underground, headed by Sydney & Ralph Alderman, with lawyer Kopkind as chief counsel, until I noticed in the Register that he was being represented by attorney Albert Evans, then of the firm of Evans & Markle, regarded quite generally as top counsel within the range of vision. Kopkind, and possibly Bill Hadden, are concealed in the stratosphere, wholly outside the range of normal vision, as are both Sydney and Ralph themselves."

Real estate racketeers, Longbotham & Marcus, described in their swindling operations, under protection of Kopkind and his law firm.

23-4-*Line* 11

See this quote under LIBEL 5.

11. KOPKIND AND FLYNN MAKE MONKEYS OUT OF JUDGES AND LIARS AND CONFEDERATES OUT OF JUDGE AND CLERK OF PROBATE;

1-3-*Par.* 2

"the practice of law to both Kopkind & Flynn has become 'a mere brawl for hire, or a system of legalized plunder, where craft and not conscience is the rule, and where falsehood and not truth is the means by which to gain his ends.'"

1-3-*Par.* 4

"Our form of government is in danger with gangster attorneys such as this telling Judges what to do and wielding such power that they are helpless to do otherwise. Judge Shanley's job would not be worth a nickel if he failed to do the bidding of Kopkind & Flynn, and Hoyt might as well pack up and go west, if he failed to respond to the hidden dictator."

2-1-*Par.* 3

"I think you may find a chuckle at the spectacle of the ORGANIST (Kopkind), with Flynn, his capable understudy, being caught with his two JUDGES, in their own trap."

3-1-*Last Line*

"Predicament in which KOPKIND & FLYNN had left Judge Shanley.

4-4-*Par.* 2

Kopkind & Flynn and Judge Hoyt ignored "every duty any one of them had to investigate or make amends. * * "because they thought Hoyt could and would block any discovery of the facts which would be be essential for any prosecution."

4-4-*Par.* 3, *Line* 14

Judge Hoyt "has been telling me a string of lies month after month to protect Peggy and Alec, clients of

Kopkind & Flynn, the mighty lords of hidden activities."

4-5-*Par.* 1

Judge Hoyt "was a do-nothing blockade of value to Kopkind & Flynn ** but worse than zero to the hospital and the other creditors."

4-5-*Par.* 2, *Lines* 3, 9, 20-22

Judge "Shanley did not even take the trouble to back up Hoyt's lie about being appointed administrator in early May. ** Klebanoff's assertion was also a lie. (He was clerk of probate) ** he (Shanley) ought to maintain an open mind so that the Hospital might get a square deal. But when Kopkind & Flynn snap their fingers, watch Shanley dance."

8-4-*Par.* 2, *Last* 2 *Lines*

"we have had revealed right before our own eyes, how they (Kopkind, Flynn, Sydney & Ralph) dictate to Judge Shanley and the machinery of the Probate Court."

19-4-*Par.* 3, *Line* 14

Issues 12 & 15 (Counts 1 & 4) disclose in simple and easily understood language just how both (Judges) Shanley & Hoyt exposed themselves and lied to cover up illegalities of the underground. They were caught hard *in their own trap.*"

12. "THERE IS, I BELIEVE, A 5 YEAR STATUTE OF LIMITATIONS IN THIS STATE ON THE CRIMES OF PERJURY, BLACKMAIL AND INTIMIDATION, ALL OF WHICH WERE CLEARLY COMMITTED BY THAT PEER OF PEERS, ATTORNEY KOPKIND."

1-3-*Lines* 6 & 10

"Kopkind was the principal offender. He was accused of committing perjury on the witness stand to cover up his connection with a fraudulent person against whom he was engaged to give Angelo protection. ** (He) Used blackmail to defeat his former client's case."

2-1-*Last Par., Lines* 1 & 2

"it was in testimony before him (Judge J. Howard

Roberts on July 7, 1953 that Bernie Kopkind committed perjury under oath."

2-2-*Lines* 1 & 2

"distinguished attorneys such as Kopkind and his cohorts stand up and lie under oath, or in violation of their oath."

4-2*S*-*Par.* 3

"One of New Haven's top flight trial lawyers * * knew of Kopkind's perjury. He heard it himself. He knew how Kopkind rooked his own client. He carefully appraised the whole situation and concluded to his own complete satisfaction that $125,000 was the minimum amount which Angelo should receive for his losses and hardships. *He reiterated this conclusion again and again*, from January through June 1954."

11-1-*Par.* 3-5

Here in 3 short paragraphs are presented details of Kopkind's perjury as stated to Grievance Committee on December 19, 1955.

11-2-*Full page*

This full page recites the blackmail and intimidation facts just as presented to the Grievance Committee in a complaint against Kopkind on December 19, 1955.

11-3-*Last Par., Sections* 1 & 3

"He (Kopkind) committed perjury on the witness stand to cover up his connection with one of the persons against whom he was supposed to be giving me protection.

He used blackmail to defeat my case against Marcus & Longbotham" (Above signed personally by Angelo and Barbara Chairamonte)

14-2-*Last Par., Lines* 7 & 8

"He (Kopkind) was really scared and at his wit's end, else he would not have committed perjury before Judge Roberts and thus tightened the knot around his neck."

15-3-*First* 7 *Lines*

"The best evidence of his (Kopkind's) original misconduct towards Angelo, his client, is the desperate effort he made on July 7, 1953 and in 1955 to prevent his conduct in 1951, 1952 and 1953 from being exposed.

Kopkind just had to stop the litigation put in progress against Eddie Marcus, Longbotham, and Dr. Donald Alderman. The evidence which would have to come out would expose to the public just what kind of a guy Kopkind really was. So he did not hesitate to utilize *perjury, blackmail and intimidation*. And I am wholly convinced he utilized some form of intimidation or blackmail to destroy the initiative of Angelo's attorney."

19-2-*Last* 3 *Lines*

"Kopkind committed perjury in open court under oath, used intimidation and blackmail to defeat Angelo's attempt at law to obtain redress. And while doing these crimes Kopkind was serving as CITY ATTORNEY in New Haven, and posing as a saint."

22-3-*Last* 4 *Lines*

"Bernie Kopkind came out of his hiding long enough to commit perjury in open court, to commit blackmail and intimidation, just enough to defeat Angelo's efforts, and to save the crooked Marcus. Then Bernie Kopkind crawled back into his self righteous shell."

GUILTY COUNT 17 — FINDING 44 (Ex. D, p. 28, or Ex. K)

13. THE ALDERMANS (SYDNEY & RALPH) WOULD KILL YOU.

1-4-*Par.* 3 3-3-*Line* 1 3-3-*Par.* 2 15-1-*Par.* 2

This alleged libel is identical with alleged libel #3 to which reference is made for excerpts from the above 4 citations contained in 3 of the not guilty counts. A reading of the entire paragraph 2 in count #15 reveals that it was the Kopkind-Alderman Brothers vice underworld administration in which the fear of death was so deeply ingrained. Common knowledge confirms the necessity of organized vice to make provision for strong arm men to enforce discipline and obedience even to the extent of death, if need be.

14. THEY (THE ALDERMANS) ARE THE VICE LORDS OF NEW HAVEN

6-1-*Last Par.* 14-4-*Line* 8 15-1-*Par.* 2, *Line* 20
18-4-*Line* 15 18-2*S*-*Line* 9 22-3-*Last Par., Line* 1
22-4-*Par.* 3

For quotations from the above citations see alleged LIBEL 6 above, which is practically identical to this one.

15. KOPKIND AND THE ALDERMANS ARE CONTAMINATING INFLUENCES.

If there is any person in these United States who could or would question the truth of this alleged LIBEL after reading what the jury found in the preceding pages as to alleged LIBELS Nos. 3 to 14, he is a candidate for psychiatric treatment.

16. DAN POUZZNER WHILE CITY ATTORNEY TOOK MONEY FROM GAMBLING PLACES.

14-2-*Par.* 2

Daniel Pouzzner "received a share of Kopkind's earnings for his services to the UNDERWORLD CZARS of New Haven. This continued for many years right up to July 1953, when Kopkind and Charlie Flynn took their departure, left the Pouzzner outfit, and took other quarters of their own." — The following is from Par. 3, same page: "he (Kopkind) was already putting into the pot a much larger income than any of the rest of the 7 lawyers, because of his heavy earnings from the Alderman brothers."

15-1-*Par.* 3

"most of his (Kopkind) mal-practice against Angelo Chairamonte occurred under the Pouzzner firm name. It was the Pouzzner firm that betrayed Angelo, its client ,who deceived him, who took his blast case and deliberately let the statute run against it, who told him to repair the damage of $1000 and then skinned him out of that as well as some $10,000 of improvements which the Pouzzner firm encouraged him to make in reliance upon the repeated assurances of attorney Edward L. Marcus that he would refinance the two houses as soon as the specified and carefully supervised improvements were made. It was the Pouzzner firm that colluded with Marcus to play Angelo for a sucker and betrayed him right in to the hands of that good looking young lawyer."

15-2-*Par.* 2

For 24 years from 1929 to about July 1, 1953 Dan Pouzzner and "every member of this firm got his proportionate share of Kopkind's criminal loot, which is all you can call his fees for doing both head work and some leg work in *setting up a perfectly organized vice ring.*"

15-2*S-Last Par.*

"It is interesting to notice that Pouzzner held the office of assistant City Attorney for about 6 years from 1925 to 1930, and then for the 2 years of 1931 & 1932 was city attorney."

15-2-*Par.* 3

Under heading of "Calamity Befalls the Pouzzner Firm" is stated: "Who should get caught but Dan Pouzzner himself, the head of the firm. Back in 1937 * * 8 years after the youthful Kopkind got started on his underground work, Dan was tripped up BY THE GRIEVANCE COMMITTEE, no less." and given "2 years of disbarment * * but by some hook or crook he beat the rap by one year and got reinstated within one year. That was a body blow to a firm that pretended to be so grand."

15-2-*Last Par.*

"Kopkind should have been disbarred long before Pouzzner was, but Kopkind was too slick to get caught. He must have had to pay some large sums occasionally to keep his misdeeds under cover, * * So Pouzzner is the really black sheep of that firm, but he couldn't be blacker than Kopkind."

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In the

Supreme Court of the United States

OCTOBER TERM, 1962

No. 837

UNITED STATES EX REL. LORING J. WHITESIDE
Petitioner

vs.

J. EDWARD SLAVIN AND GEORGE R. TIERNAN
Respondents

On Petition for a Writ of Certiorari to The United States Court of Appeals for the Second Circuit.

BRIEF OF THE RESPONDENTS IN OPPOSITION

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UNITED STATES EX REL. LORING J. WHITESIDE
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J. EDWARD SLAVIN AND GEORGE R. TIERNAN
Respondents

BRIEF OF THE RESPONDENTS IN OPPOSITION

OPINION BELOW

The opinion of the court below is reported in 309 F.2d 322 and it affirmed the judgment of the United States District Court for the District of Connecticut denying a petition for habeas corpus because of failure to exhaust state remedies.

QUESTIONS PRESENTED

1. Does the petitioner's failure to exhaust state remedies make habeas corpus unavailable to him in the federal courts?

2. Is there any exceptional circumstances that provides a basis for relaxing the requirement of exhaustion of state remedies?

STATEMENT

This is a petition for certiorari to the United States Court of Appeals for the Second Circuit following its difference of a judgment of the United States District Court for the District of Connecticut denying a petition for habeas corpus because of a failure to exhaust state remedies.

The petitioner had been convicted of four counts of a twenty-three count information for criminal libel before a jury in the Court of Common Pleas of the county of New Haven, State of Connecticut. The conviction was affirmed by the Connecticut Supreme Court of Errors, *State of Conn. vs. Whiteside*, 148 Conn. 208, 169 A.2d 260 (1961); reargument was denied and the United States Supreme Court denied certiorari, October 9, 1961.

The petitioner for the first time alleged two constitutional questions in his petition for habeas corpus in the United States District Court, namely (1) denial of a bill of particulars deprived him of a right under the Sixth Amendment to be fully informed of the charges against him, (2) prejudice of the justices of the Connecticut Appellate Court deprived him of due process of law under the Fourteenth Amendment.

He did not seek a writ of habeas corpus in the state courts although it was available to him. Section 52-466 General Statutes of Connecticut. He never requested the Connecticut courts to pass on the asserted constitutional rights.

ARGUMENT

I.

THE DECISION OF THE COURT BELOW IS CORRECT. THE PETITIONER DID NOT EXHAUST STATE REMEDIES AVAILABLE TO HIM.

The remedy of habeas corpus is not available if the petitioner failed to exhaust state remedies. He is not deemed to have exhausted the remedies available in the courts of the state if he has the right under the law of the state to raise by any available procedure, the question presented.

28 U.S.C.A. 2254;

Parr vs. *Burford*, 339 U.S. 200 (1950);

Brown vs. *Allen*, 344 U.S. 443 (1952);

Williams vs. *LaVallee*, 276 F.2d 645 (2d Cir. 1960)

Habeas corpus was available to the petitioner in the state courts. Connecticut General Statutes, Section 52-466. He could have presented the constitutional questions to the state courts by this method. He did not do so. He could have raised one of the questions on appeal to the Connecticut Supreme Court of Errors. He did not do so.

As Judge Anders said:

> "At no time have the courts of the State of Connecticut passed upon the merits of the Federal Constitutional questions raised by the petitioner in his application." (Pet. Brief, A-4)

This was reasserted in the opinion of the court below. 309 F.2d 322.

Clearly the petitioner failed to exhaust state remedies and habeas corpus is not available to him.

II.

THERE ARE NO EXCEPTIONAL CIRCUMSTANCES IN THIS CASE THAT WOULD PROVIDE A BASIS FOR INTERVENTION BY A FEDERAL COURT JUSTIFYING ABANDONMENT OF ITS PRECEPT OF EXHAUSTING STATE REMEDIES FIRST.

The petitioner raised the constitutional questions for the first time in the habeas corpus proceeding. His belated claim of not being properly informed of the charge by the trial court's denial of a motion for a bill of particulars was not assigned as error in his original appeal. He made a wholesale attack on the criminal information on the appeal but he did not assign error on constitutional grounds.

The claim of prejudice of the Justices of the Connecticut Supreme Court was raised by the petitioner in his former petition for certiorari which was denied by this court in October, 1961.

In the United States District Court the petitioner was afforded an ample opportunity to present evidence relative to his claim of prejudice. He presented none.

CONCLUSION

The lower court affirmed the judgment of the United States District Court of Connecticut. Habeas corpus is not available to the petitioner in the federal courts because he did not exhaust state remedies.

Therefore this petition for certiorari should be denied.

Respectfully submitted,

GEORGE R. TIERNAN,
Counsel for Respondents.

March 18, 1963.